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Thesis

THE SOCIOLOGICAL BASIS OF THE LAWS WITH REFERENCE TO FEMALE
SEX OFFENDERS IN MASSACHUSETTS [1620 - 1860]

by

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OUTLINE

	<u>pages</u>
I. Introduction	1 - 8
II. The Colonial Period from 1620 - 1692	9 - 29
A. The social and economic development of Massachusetts	9 - 19
B. The laws with reference to female sex offenders	19 - 28
C. The relationship between A. and B.	28 - 29
III. The Period from 1692 - 1763	30 - 54
A. The social and economic development of Massachusetts	30 - 45
B. The laws with reference to female sex offenders	45 - 52
C. The relationship between A. and B.	52 - 54
IV. The Period from 1763 - 1860	55 - 79
A. The social and economic development of Massachusetts	55 - 70
B. The laws with reference to female sex offenders	70 - 76
C. The relationship between A. and B.	77 - 79
V. The Absence of Legislation Since 1860	80
VI. Digest	81 - 82

BIBLIOGRAPHY

To understand the code of sex morality which characterizes the State of Massachusetts, it is necessary to inquire into the social equipment brought to this country by our founding fathers and the conditions which directed that equipment along very definite channels.

Our Puritan ancestors came to the new continent endowed with a concept of marriage already well-moulded by the Hebrew patriarchs and firmly formulated by the Christian Church. This heritage, in which the family was a compact social unit dominated by the father, regarded as sacred, and in which the wife and children contributed greatly in fulfilling economic functions, served well to meet the needs of the early economic structure of the New England colonies.¹

The first attempts at colonization in Massachusetts might be paralleled roughly ^{to} the pastoral stage of Hebrew civilization when there split away from the tribe groups bound by ties of blood, each of which was solidly cemented together in the economic fundtion of caring for the flocks.² Beyond the realm of the family group and the tending of flocks, society offered little means of subsistence. So, too, in early colonial times, the economic struggle for existence found its focal point in the family group. Among the Isrealites the preservation of all property within the family group under complete male control placed a marked emphasis on family unity and stability.³ This identical function of property inheritance under male dominance remained

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1. Goodsell, Willystine, A History of Marriage and the Family, The Macmillan Co., 1934 (revised edition), pp. 366-367.
 2. Goodsell, W., op. cit., pp. 53-54.
 3. Goodsell, W., op. cit., p. 56.

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to be served by our colonial patriarchal family. Carrying the parallel one step further, since wives and children were included among the property of the Hebrew patriarchs,⁴ it is not surprizing to find that carry-over into the concept of marriage introduced and insisted upon by the first colonial governing bodies in the Massachusetts Bay Colony.⁵ In colonial times the additional need for populating vast stretches of territory⁶ served to re-emphasize the familial structure serving the above-named functions.

Dr. Goodsell summarizes these functions succinctly when she says, "....that marriage and patriarchal family organization were designed in large measure for the protection of private property, and for its control and inheritance by males. Other ends were doubtless served by these institutions, but the economic purpose (italics mine) was fundamental from the dawn of history to the latter half of the nineteenth century."⁷

It is not, therefore, surprizing to find the moral code of the ancient Hebrews applied practically in its entirety to the early New England family. In line with this moral code, the early Courts of Assistants issued their decrees against those who did not conduct themselves according to the accepted social pattern, and as early as 1631 we find a "Court of Assistants holden att Boston, October 18th" ordering "that if any man shall have carnall copulacõn with another man's wife, they both shalbe punished by death."⁸ This differs from and intensifies the Hebraic

4. Goodsell, W., op. cit., p. 54.

5. Goodsell, W., op. cit., p. 359.

6. Goodsell, W., op. cit., p. 366.

7. Goodsell, W., op. cit., p. 317.

8. Records of the Governor and Company of the Massachusetts Bay in New England, edited by Nathaniel B. Shurtleff, printed by The Press of William White, 1853, vol. 1, p. 92.

code in which only the woman suffered death. Thus was the tradition early established in colonial history in which morals became a subject of court
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legislation.

Who were the men responsible for the particular brand of family life established in the New England colonies? The Puritans who dominated the early colonial governing forces had been a small religious minority in
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England struggling there not for toleration but for control. For a statement of their beliefs, let us look to James Truslow Adams. "The central pivot of their creed was the absolutely unconditioned will of God. The system, which is strongly tinged with legal doctrine, acknowledges no law but that of his untrammelled will. From this flow two consequences. One is that there is no room for a non-moral sphere of activity, for actions which, belonging
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merely to the domain of nature, are untinged by moral obligation."

Adams goes on to say that "His [the Puritan's] imagination was wholly concentrated on questions of religion, and that religion was a "narrow Hebraism" which "kept open its windows toward Jerusalem, but closed every other avenue to the soul...Heaven and hell were as vividly visualized by him as external
12
facts."

Since the Puritans were of "the elect", they were not condemned to hell forever as were their less fortunate bretheren. The result was their minds were characterized by a smug self-assurance and rigid intolerance of
13
others' ideas.

9. Cases and Materials on the Development of Legal Institutions, edited by Julius Goebel, Columbia University, 1931, p. 538.

10. Adams, James Truslow, The Founding of New England, Little, Brown, and Co., p. 71.

11. Adams, J.T., op. cit., p. 77.

12. Adams, J.T., op. cit., p. 78.

13. Adams, J.T., op. cit., pp. 78-79.

1. The first part of the paper discusses the importance of the study and the objectives of the research.

2. The second part of the paper describes the methodology used in the study and the data collection process.

3. The third part of the paper presents the results of the study and discusses the findings.

4. The fourth part of the paper discusses the implications of the study and the conclusions drawn from the research.

5. The fifth part of the paper discusses the limitations of the study and the areas for future research.

6. The sixth part of the paper discusses the contributions of the study to the field of research.

7. The seventh part of the paper discusses the ethical considerations of the study and the measures taken to ensure ethical standards.

8. The eighth part of the paper discusses the practical applications of the study and the recommendations for practice.

9. The ninth part of the paper discusses the overall findings of the study and the conclusions drawn from the research.

10. The tenth part of the paper discusses the limitations of the study and the areas for future research.

11. The eleventh part of the paper discusses the contributions of the study to the field of research.

12. The twelfth part of the paper discusses the ethical considerations of the study and the measures taken to ensure ethical standards.

13. The thirteenth part of the paper discusses the practical applications of the study and the recommendations for practice.

14. The fourteenth part of the paper discusses the overall findings of the study and the conclusions drawn from the research.

God's will, according to which "every detail of family life" had to be regulated, was learned from the Bible, particularly the Old Testament. From it [the Old Testament] almost exclusively, they drew their texts, and it never failed to provide them with justification for their most inhuman and bloodthirsty acts."¹⁴

Such a creed left no room for freedom of thought or private conduct and "obviously opened the way to the most far-reaching tyranny to which men could be called upon to submit."¹⁵ This complete surrender to the divine will of God carried with it a negation of the ideas of self-development and personality expression. Adams sees this school of thought taking ready root in the new middle class of the reformation period as a fanatical protest against the immorality of the decadent and hostile nobility.¹⁶

The Puritan minority opposition group of England became a "New England oligarchy" which attempted to translate its moral standards into a legal code.¹⁷ We shall examine that legal code to learn the attitude of the Puritan leadership on sex matters and we shall attempt to tie these morals and the resulting laws to the economic and social base from which they grew.

14. Adams, J.T., op. cit., p. 80.

15. Adams, J.T., op. cit. p. 79.

16. Adams, J.T., op. cit., p. 85.

17. Adams, J.T., op. cit., pp. 111-112.

Goebel tells us that "The very circumstance that certain types of behavior should be punished is closely connected with the whole Christian morality and the function of the church in propagating and guarding its moral standards."¹⁸

Adams points out that the geographical nature of New England produced a population which was largely middle class, - the class in which Puritanism found fertile soil for growth.¹⁹ Even so, not a few of the early colonists rebelled against a morality characterized by "repression and conformity" and underneath the blanket of Puritan morality many then unmentionable activities went on. Unfortunately the Puritan philosophy allotted no place for recreation, with the result that "Those who lacked the taste or temperament to find their relief from the deadly monotony of long hours of toil in theological exposition, and who were debarred from their old-time sports, turned to drunkenness and sexual immorality, both of which were frequent in Puritan New England."²⁰

It is important to remember that decisions and laws made by the Courts of Assistants represent the opinions of a small group of men (varying in number from seven to eighteen) elected by the General Court of company members (or freemen) who were but a tiny fraction of the entire population. These proprietors alone possessed the right to vote and legislate. Although the charter of the Massachusetts Bay Company issued in 1629 provided for the legislative authority to rest in the General Court, from 1630 to 1634 this

18. Cases and Materials on the Development of Legal Institutions, op. cit., p. 536.

19. Adams, J.T., op. cit., pp. 112-113.

20. Adams, J.T., op. cit., p. 111.

function had been performed exclusively by the autocratic Court of Assistants. In the latter year, as a result of a town investigation into the charter, the General Court assumed its rightful duties.²¹

It is significant to note also the close alliance in the early colonial government between the clergy and the civil authorities. "The King and the Archbishop were no more closely allied, nor more bent upon forcing their own will upon that of the people, than were the civil and ecclesiastical powers of the little American commonwealth, however worthy or unworthy the motives of each may have been."²² That the magistrates and clergy acted together was clearly illustrated in the civil order calling for the banishment of Roger Williams who advocated separation of church and state as well as religious toleration.²³ Equally indicative of unanimity in interests was legislation making church attendance compulsory; forbidding criticism of the clergy; and taxing everyone to support the ministers, despite the fact that only one-fifth of the colonists were church members.²⁴

Thus was the ground prepared for the installation and development of the social, ethical and moral concepts embodied in Puritanism, a whole vividly described by Adams as a "...wild fruit that grew steadily more gnarled and bitter...."for the next two centuries.²⁵

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- 21. Adams, J.T., op. cit., p. 160.
 - 22. Adams, J.T., op. cit., pp. 162-163.
 - 23. Adams, J.T., op. cit., pp. 163-164.
 - 24. Adams, J.T., op. cit., pp. 171-172; p. 121.
 - 25. Adams, J.T., op. cit., p. 174.

The first part of the paper discusses the importance of the study and the objectives of the research. It then proceeds to a literature review, where the author examines previous studies in the field. The methodology section follows, detailing the research design and data collection methods. The results section presents the findings of the study, and the conclusion summarizes the main points and offers suggestions for future research.

The study was conducted in a laboratory setting, where the participants were asked to perform a series of tasks. The data was collected using a specialized software program, which allowed for precise measurement of the variables of interest. The results of the study are presented in the following table.

1	2	3	4	5	6	7	8	9	10
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The same two centuries, however, witnessed a change in the economy of the New England states from one primarily agricultural in nature with commerce and industry as supplementary occupations to one largely commercial in form. And concurrently with and out of the commercial development emerged the stage of industrial capitalism which was continued to grow to vast proportions and dominates our society today. ²⁶ This tremendous change in the economic structure was bound to affect social institutions, and not one of the least so to be affected was the family. The modern apartment-dwellers, Mr. and Mrs. Jones with their one, two or three children (or none at all!) each seeking and finding the fulfillment of their life needs in the larger social groups differ radically from the Mr. and Mrs. Smith (the latter very likely succeeded after early death by one or two other Mrs. Smiths) of the Massachusetts colony with their dozen or so children, and their lives completely encompassed by the family hearth.

Just as the character of the family and family life have changed with new industrial base, so have the functions which the family has to perform in society changed. Many of its old functions have vanished leaving only an occasional, nostalgic trace, - these are protection, religion, education, food-production and clothing-production. One basic function, reproduction, has lost considerable ground. What is left of this latter function plus the rearing of children and the supplying of affection appear to be the main-springs on which our family life rests today.

The vital organs and the face of the family have changed. The moral code of the early Puritans still remains, - written in black and white into the law books of Massachusetts; written in tragedy and misery into the lives

26. Bimba, Anthony, The History of the American Working Class, International Publishers, 1927, third edition, p. 30.

of unfortunate human beings.

With this introduction, let us proceed to explore the details of the economic and social structure of Massachusetts in each of the main periods of its development until the Civil War, the laws of these periods dealing with "sex offenders" (confined in this thesis to women), and the possible relationships which might exist between the two.

The ^{primary} unit of society in colonial New England - socially, economically and culturally - was the family group. The concept of a strong family unit was introduced by settlers who had a long heritage of family solidarity; and in the unyielding soil of the New England frontier, this institution took firm root. As James T. Adams says, "The family was...closely connected with another fundamentally important institution, land, which provided its economic base and to a large extent molded its social and legal aspects."¹

The first New Englanders were starting literally from "rock-bottom" in their efforts at establishment on the new continent. Because of its glacial origin and the preponderance of boulder clay, only intensive, diligent and skillful efforts on the part of many hands could make the soil produce. This urgent need for land productive power coupled with the basic necessity of filling ones daily subsistence requirements (cooking, spinning, sewing, etc.) made family life the sine qua non of colonial existence. The labor market was so under-supplied that it was most desirable and least expensive to raise ones own labor by having many children. And this was done on an extensive scale, - a scale that would have done the hearts of Mussolini and Hitler good. Families of 30, 27, 26, 23, 20, 17, 13 and 12 offspring were far from rare occurrences according to the testimony of Cotton Mather,² and nine persons per family (including servants)³ was the average.

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1. Adams, J.T., Provincial Society, 1690-1763, (A History of American Life, vol. 3), The Macmillan Co., 1927, p. 11.
 2. Wertenbaker, Thomas Jefferson, The First Americans, 1607-1690, (A History of American Life, vol. 2), The Macmillan Co., 1927, pp. 182-183.
 3. Goodsell, W., op. cit., p. 398.

The size of a man's family was taken into account in the dispensation of the land of a town, so that "An industrious man with an unusually large family might find himself similarly favored with more acreage."⁴ And "...when the division of land was made in Salem in 1634, it was ordered that 'the least family shall have ten acres, but greater families may have more⁵ according to their number.'"

Each member of the early family lived an every-day existence of drudgery and hardship. No one escaped from the many phases of work that had to be done. Except for those frequent intervals when the household listened to the reading of the scriptures, there was probably little relaxing. The men and boys of the house could usually be found busily engaged on the farm; while the women and girls repeated the routine of cooking, cleaning, food preparation, soap and candle-making,⁶ etc. In spare moments there was always whittling of home necessities out of wood to be done, or a dozen other household tasks.

As if this alone were not enough for one group of human beings to do, the government encouraged families to undertake flax and sheep raising, and linen and woolen manufacturing. This official encouragement of household industry was prompted by the unfavorable balance of trade faced by the colonies. Their limited exports of furs, naval stores, fish oil, etc. were not sufficient to pay for all the manufactured goods they would have liked to purchase from the mother country.

The official court order in 1640 encouraging these activities "ordains

4. Wertenbaker, T.J., op. cit., p. 56.

5. Wertenbaker, T.J., op. cit., p. 56.

6. See Wertenbaker, T.J., op. cit., pp. 83-85 for a typical dawn-to-dusk routine for the colonial family.

that boys and girls be taught to spin yarn ⁷ [italics mine]; the same process ⁸ essentially is applied to cotton wool." Weeden further states: "Cotton did not come in fast enough from the West Indies; in this year [1640] for lack of it for clothing, the Court recommends the gathering of wild hemp, stating that 2d per pound is already offered for it by sundry persons, and enjoining the people to work their children and servants early and late. [italics mine]".

Under governmental compulsion, the homespun industries, by 1642, had become "an integral part of life in the Puritan colonies." ⁹ Later, decrees of Cromwell establishing high export duties on raw materials as well as the finished cloth products, together with a reciprocal trade treaty with France to the detriment of the colonies, provoked the Massachusetts General Court to act again, "...fearing that it will not be so easy to import clothes as it was in past years, thereby necessitating more home manufacture," [it] orders the selectmen in every town to turn the women, girls and boys [italics mine] toward spinning and weaving. The officials are to consider each family, and to assess it for one or more spinners, or for a fractional part. That everyone thus assessed do after this present year 1656 spin for 30 weeks every yeare, a pound per weeke of lining cotton or wooling and so proportionably for halfe or quarter spinners under the penalty of ¹⁰ 12d for every pound short [italics mine]."

7. Weeden, William B., Economic and Social History of New England, 1620-1789, vol. 1, Houghton, Mifflin and Co., 1899, p. 170.

8. Weeden, W.B., op. cit., vol. 1, pp. 170-171.

9. Weeden, W.B., op. cit., vol. 1, p. 176.

10. Weeden, W.B., op. cit., vol. 1, pp. 197-198.

The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then proceeds to discuss the various factors that have shaped the development of the United States, including the role of the government, the influence of the economy, and the impact of the culture.

In the second part of the paper, the author examines the role of the government in the development of the United States. It is argued that the government has played a central role in the shaping of the nation, and that its actions have had a profound impact on the lives of the people. The author then discusses the various ways in which the government has influenced the development of the United States, including through its policies, its laws, and its actions.

The third part of the paper discusses the influence of the economy on the development of the United States. It is argued that the economy has played a central role in the shaping of the nation, and that its actions have had a profound impact on the lives of the people. The author then discusses the various ways in which the economy has influenced the development of the United States, including through its policies, its laws, and its actions.

Finally, the author discusses the impact of the culture on the development of the United States. It is argued that the culture has played a central role in the shaping of the nation, and that its actions have had a profound impact on the lives of the people. The author then discusses the various ways in which the culture has influenced the development of the United States, including through its policies, its laws, and its actions.

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Prof. Wertenbaker has described the intricate and pains-taking processes¹¹ which went on in many colonial homes in the production of linen cloth:

"After the seeds had been sown, and the graceful plants with their pretty drooping blue flowers had grown to full size, the stalks were pulled up by the roots, dried in the sun or by fires, drawn through a heavy comb to break off the seed bolls, bundled, rotted in water, dried again, pounded in the ponderous flax break, scutched with the swingling block and knife, drawn through the hatchel, placed on the clock reel and spun into long, even threads, bleached in water, seethed, rinsed and dried. The yarn was now ready for the loom. Usually the weaving was done at home, in the attic or shed loft, but at times this part of the work was left to professional weavers. Weaving was also a very complicated procedure, and there now followed the winding of the quill and bobbin, the 'warping and beaming', then 'drawing' or 'entering.'"

Painting a word picture of colonial New England in 1690, Adams describes "...a widely scattered and mainly agricultural population leading a hard-working, narrow, parochial and sometimes dangerous existence in solitary farms, tiny hamlets, or at most in what would now be considered small villages ...It was a society in which all the conditions tended greatly to emphasize the solidarity of family life [*italics mine*] and that of the smaller political units."¹²

The freehold nature of land tenure in the Massachusetts colony (as differentiated from the feudal tenure which characterized most of the colonies) resulted from the combination of many factors and provided a perfect economic base for the patriarchal family. Weeden tells us that:

"It was the admirable economic land tenure which shaped the early towns; without this, even their religious and political system might not have established their distinctive system of living...the liberty of the individual man was enshrined in the homestead, but the dependence of the enlightened citizen was incorporated in a body of duties and privileges that the

11. Wertenbaker, T.J., op. cit., pp. 76-77.

12. Adams, J.T., op. cit., p. 23.

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world will never cease to admire." The conditions which lead to this particular form of land ownership have been described succinctly by the

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Beards: ".....the climate and soil of New England, coupled with an abundance of land and scarcity of labor, made anything like feudalism impossible... Controlled by factors beyond their mastery, the Puritans therefore spread over New England under the leadership of freehold farmers..."

The Beards go on to explain that those to whom the hard and involved life of the farmer-producer did not appeal, secured their economic subsistence from the sea in the pursuits of fishing, commerce and ship-building. But 90 per cent of the population were tied to the land, and the most efficient social unit for exploiting the small land-holdings was the patriarchal family.

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Engels' generalization that "The social institutions, under which the people of a certain historical period and of a certain country are living, are dependent on these two forms of production; partly on the development of labor, partly on that of the family" might well be illustrated in the particular period under discussion. He goes on to say:

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"The less labor is developed, and the less abundant the quantity of its production, and, therefore, the wealth of society, the more society is seen to be under the domination of sexual ties. However, under this formation based on sexual ties, the productivity of labor is developed more and more." This seems to describe the situation as it worked out when this continent was settled.

13. Weeden, W.B., op. cit. p. 53.

14. Beard, Charles A. and Mary R., The Rise of American Civilization, vol.1, The Macmillan Co., 1927, p. 55.

15. Engels, Frederick, The Origin of the Family, Private Property and the State (fourth edition), Charles H. Kerr and Co., 1909, p. 10.

16. Engels, F., op. cit., p. 10.

Although the founding fathers came from countries where man had advanced to a high stage in economic development (the handicraft and industrial level), they themselves were forced to utilize the technique of the hunting and fishing and the agricultural stages in coping with pioneer conditions, and in getting their foothold on the new continent. Once that was accomplished, the industrial revolution could advance from the already high level achieved in England with lightening rapidity. "Consequently",
 17
 says Commons, "industrial evolution in colonial times was not the evolution of tools and processes, but the evolution of markets fitted to utilize the tools and processes already evolved."

We, however, are still concerned with the agricultural era in colonial history, and the family institution which grew out of it. An important influence in shaping the colonial family was the emphasis on a well established concept, - private property. "And when with the preponderance of private property over collective property and with the interest for inheritance paternal law and monogamy assumed the supremacy, then marriage became still more dependent on economic considerations. The form of purchase marriage disappears, but the essence of the transaction is more and more intensified, so that not only the woman, but also the man have a fixed price - not according to his qualities, but to his wealth."
 18

Weeden has given us an illustration of exactly how this process of marriage "transaction" worked in bringing a couple together, in the period
 19
 we are discussing:

17. Commons, John R., et. al., History of Labour in the United States, vol.1, The Macmillan Co., 1921, p. 28.

18. Engels, F., op. cit., p. 95. Also see above pp. 2 in reference to Goodsell.

19. Weeden, W.B., op. cit., pp. 219-220.

"We come more intimately into the loves of Henry Grey and Lydia Frost, which halted, though they finally moved to fruition, and Henry, with Lydia's help, ultimately became a prominent man and deputy to the General Court in Fairfield, Connecticut. Lechford, the lawyer, was a friend of the father, and wrote from Boston, in 1640, commending Grey and his mission when he went to induce the reluctant papa to favor his suit. Grey went to satisfy his proposed father-in-law concerning his estate, 'which yet the maid doth not stand on, but is fully satisfied thereabout and all other things, and her affections to him remain.' Grey's father had promised an unknown sum toward a house; this has been lately increased by 20 pounds. Grey's brother, a citizen of London, has promised 'to stock him with 100 pounds worth of commodities from time to time, if the Lord keepe open the way, and he is to have half the profit.' Grey could show that he was then worth 50 pounds, 'which is as much as her sister here desired and more than the maid herself ever stood on.'"

20

This economic and social historian tells us that "The whole business of matrimony was conducted by an economic and practical method of procedure, the forms of which were well prescribed and understood. When people married in those days, they went to the business in regular and methodical fashion. Sentiment might and generally did stimulate the proceedings, but it must enter formally and move according to the will of parent or guardian. The pattern of love-making was as rigid as that of their ruffs and collars. There was a highly economic method in the whole matter of courtship and marriage."

It is not to be wondered, therefore, that the institution of matrimony, so essential to all the economic processes in the colonies, was carefully safe-guarded in laws. Included in the necessary legal measures in establishing this civil contract were: (1) securing parental consent; (2) publication of banns or receiving the Governor's license; (3) legal solemnization by a magistrate, and (4) registration in the court.

21

In 1639, the General Court meeting in Boston on Sept. 4th, ruled as

20. Weeden, W.B., op. cit., p. 219.

21. Goodsell, W., op. cit., pp. 382-383.

1. The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present and for the development of a sound policy for the future. The author points out that the study of history is not only a means of satisfying a natural curiosity about the past, but also a means of training the mind in the habits of critical thinking and logical reasoning.

2. The second part of the paper discusses the various methods of historical research. It is pointed out that the historian must be able to collect and evaluate evidence, to interpret the evidence, and to present his findings in a clear and convincing manner. The author discusses the importance of the primary sources, the secondary sources, and the various methods of historical research, such as the use of the library, the use of the archives, and the use of the field.

3. The third part of the paper discusses the various schools of historical thought. It is pointed out that the study of history has been dominated by a number of different schools of thought, each of which has its own particular view of the past and of the present. The author discusses the importance of the various schools of thought, such as the Annales School, the Chicago School, and the New History.

4. The fourth part of the paper discusses the future of the study of history. It is pointed out that the study of history is a constantly changing field, and that the future of the study of history will be determined by the changing needs of society. The author discusses the importance of the various methods of historical research, and the importance of the various schools of historical thought, and the importance of the future of the study of history.

22

follows:

"For pventing of all vnlawfull marriages...it is ordered, that, after dewe publication of this order, noe psons shalbee ioyned in marriage before the intention of the pties pceeding therein hath bene 3 times published at the time of publike lecture or towne meeting, in both the townes where the pties, or either of them, do ordinarily reside; & in such townes where no lectures are, then the same intention to bee set vp in writing vpon some poast standing in publike viewe, and vsed for such purpose...onely, & there to stand, so as it may easily bee read, by the space of 14 dayes."

"Behind and beyond all", relates Weeden, "the Puritan ecclesiastical machinery looms heavily and darkly in the background, ready to crush either parent or child should any inconsiderate impulse cross the hard, iron lines of its conventional administration of social matters."²³

Morris tells us that, "Single women (who were 'antient maids' at 25) and bachelors were looked upon as living on the borderland of criminality by a society that glorified the orthodox family."²⁴

Contrary to the general conception, the Puritan elect did not accept the English common law as the basic rule of the new commonwealth. They incorporated it only as supplementary to their own original code, "the law of God."²⁵ They held that "...no authoritie or power either in parents, masters, magistrates, commissioners, etc. doth or ought to hold agt God or his commands...."²⁶ This "law of God" took the form required of it by the conditions of life facing the colonists described above and the biblical emphasis peculiar to the Puritan mind. "The New England scion of this stock", writes Weeden, "started with high hope to make a new kingdom of the elect, a moral oasis in the dreary world abandoned to sin...we read their

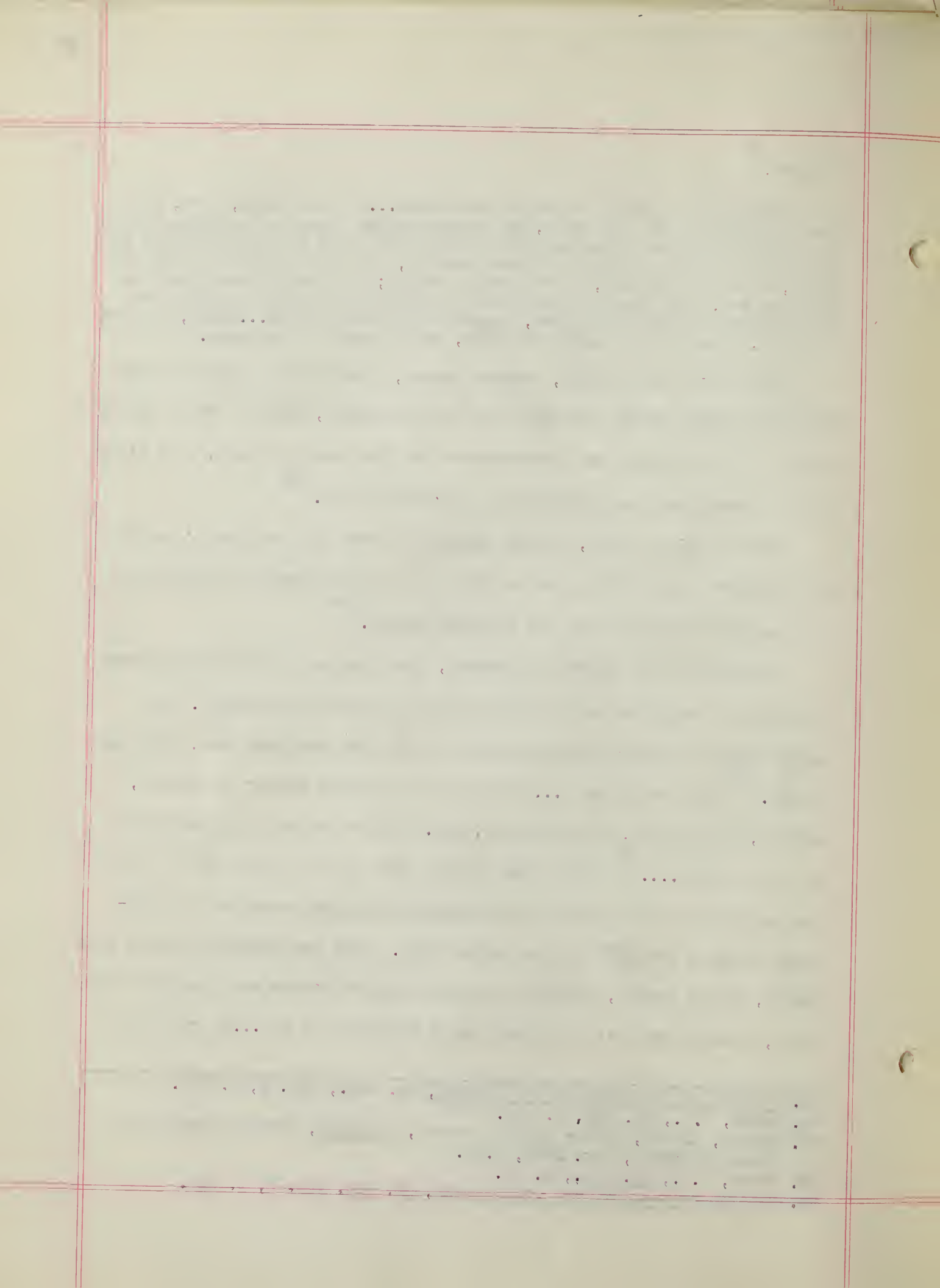
22. Records of the Governor and Company, op. cit., vol. 1, p. 275.

23. Weeden, W.B., op. cit. p. 220.

24. Morris, Albert, "Crime in Old Boston", Bostonia, Boston University Alumni Magazine, Jan. 1930, p. 9.

25. Adams, J.T., op. cit., p. 14.

26. Records of the Governor and Company, op. cit. vol. 3, p. 324.



systems and working beliefs [those of Winthrop, Hooker, etc.] , - the artless attempts of these men to render God's judgments by scriptural analogies into the administration of human law - wondering what enlightened intellects could have conceived such impossibilities. The men were not at fault. The social and religious atmosphere was charged with an unattainable ideal of vicarious virtue, - a conception of duty which exalted each bold scriptural theorist into a keeper of his brother's conscience, - a priestly²⁷ administration of another's soul."

That there was plenty of "soul-keeping" to be done among the colonial settlers is a recognized fact. Rigid laws of family unity may have been an economic necessity in the early seventeenth century; but they went against the grain of many of the less restrained forefathers and mothers.

28

Calhoun attributes many of the extra- and pre-marital sex relations that troubled the colonial authorities to the practice of bundling, a Dutch carry-over which lasted well into the eighteenth century. Poor colonial mothers, inconvenienced by a fuel and candle shortage, saw nothing wrong in allowing the young men courting their daughters to get into bed with them without undressing. This was merely an extension of the hospitality

29

shown passing friends with whom beds were generously shared. Calhoun tells us, however, that in Massachusetts, this custom was not confined to³⁰ the lower classes.

For the most part, the wealthy condemned this custom as a vice; whereas those in favor of it said that the unfortunate incidents resulting were

27. Weeden, M.B., op. cit., pp. 222-223.

28. Calhoun, Arthur W., A Social History of the American Family from Colonial Times to the Present, vol. 1, The Arthur H. Clark Co., 1917, p.129.

29. Cf. the parallel custom among the Esquimo tribes carried one step further to the sharing of one's wife, as well as one's bed, with the itinerant stranger.

30. Calhoun, A.W., op. cit., p. 130.

fewer than those in the higher circles where different methods of courtship were practiced! "It is easy for those in comfortable circumstances to re-
 31
 probate as vices the make-shifts of penury", adds Calhoun. He attributes the gradual decline of this custom to the increase of wealth which made possible larger and more commodious homes and to the less rigorous conditions
 32
 of life as the initial stages of settlement passed.

Another early custom responsible for frequent pre-marital sex relations was the pre-contract or official engagement embodied in the publication of
 33
 banns declaring ones intention to marry. This "half-way married" state gave couples the basis for relations, which they later confessed in church meetings under the over-whelming fear of infant damnation. Calhoun is of the opinion that much of the incontinence of early New England was not promiscuous.
 34

Charles Francis Adams, in a paper read before the Massachusetts Historical Society on "Some Phases of Sexual Morality and Church Discipline in Colonial
 35
 New England", describes his findings as the result of an examination of the Records of the First Church of Quincy (dating from 1673-1773). First he pictures the village of Braintree which was served by this church as "an ordinary seaboard town of Massachusetts" with a population of 700 "souls" in

31. Calhoun, A.W., op. cit., p. 130.

32. Calhoun, A.W., op. cit., p. 132.

33. See above, pp. 15 - 16.

34. Calhoun, A.W., op. cit. p. 135.

35. Adams, Charles F., "Some Phases of Sexual Morality and Church Discipline in Colonial New England", Proceedings of the Massachusetts Historical Society, Second series, vol. 6, 1890-1891, Published by The Society, 1891, pp. 480-481.

1. The first part of the report discusses the general situation of the country and the progress of the work in the various departments. It also mentions the results of the recent elections and the state of the finances.

2. The second part of the report deals with the internal affairs of the country, including the administration of justice, the state of the education system, and the progress of the public works.

3. The third part of the report discusses the external affairs of the country, including the relations with the neighboring states and the progress of the foreign trade.

4. The fourth part of the report deals with the military affairs of the country, including the state of the army and the progress of the military reforms.

5. The fifth part of the report discusses the social and economic conditions of the country, including the state of the population, the progress of the industrial and agricultural production, and the state of the public health.

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81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100

1673:

"The meeting-house, about which clustered the colonial village, stood on the old Plymouth road, between the tenth and the eleventh mile-posts south of Boston. The people were chiefly agriculturists, living on holdings somewhat widely scattered; the place had no special trade or leading industry, and no commerce, so that, when describing the country a few years before, in 1660, - and since then the conditions had not greatly changed, - Samuel Maverick said of Braintree, 'It subsists by raising provisions, and furnishing Boston with wood...'"

In the Church Records he came across the following entry, similar to many others, in the hand-writing of Rev. Moses Riske (pastor from 1672-1708) dated March 2, 1683:

"Temperance, the daughter of Brother F_____, now the wife of John B_____, having been guilty of the sin of Fornication with him that is now her husband, was called forth in the open Congregation, and presented with a paper containing a full acknowledgment of her great sin and wickedness, - publicly bewayled her disobedience to parents, pride, unprofitableness under the means of grace, as the cause that might provoke God to punish her with sin, and warning all to take heed of such sins, begging the church's prayers, that God would humble her, and give a sound repentance, etc. Which confession being read, after some debate, the brethren did generally if not unanimously judge that she ought to be admonished; and accordingly she was solemnly admonished of her great sin, which was spread before her in divers particulars, and charged to search her own heart wayes and to make thorough work in her Repentance, etc. from which she was released by the church vote unanimously on April 11th 1698."

These fifteen years of doing penance was a penalty of a different nature from those dealt out in the earlier years.

In the Records of the Governor and Company of the Massachusetts Bay in New England we learn that at "A Court, holden att Boston, November 7th 1632...It is ordered, that Robert Huitt and Mary Ridge shalbe whipt for committing fornicacõn together, of wch they are convicted."

36

Ten years later, a law promulgated on May 18, 1642 provides that:

"If any man shall comit fornication wth any single woman, they shall bee punished either by enioyning to marriage, or fine, or corporal punishmt,³⁷ or all or any of these, as the judges shall appoint, most agreeable to the word; and this order to continue till further order bee taken in it."

That fornication was being punished not only for its potential threat to the institution of marriage and the family but also for other reasons, not indicated but suggested, we have indicated in a Court order of December 4,³⁸ 1638. "John Bickerstaffe was censured to bee severely whiped for comitting fornication wth Ales Burwoode...Ales Burwoode was censured to bee severely whiped for yelding to Bickerstaffe wthout crying out, & concealing it 9 or 10 dayes [*italics mine*] ."

In 1665, disfranchisement was added to the punishment of any freeman "legally conuicted of that [fornication] or any other shamefull & vitious crime."³⁹

In contrast with this penalty for having sex relations with a single woman (i.e. fornication), let us examine the punishment meted out to those whose cohabitation involved a married woman (adultery).

37. Records of the Governor and Company, op. cit., vol. 2, p. 21.

38. Records of the Governor and Company, op. cit., vol. 1, p. 246.

39. Records of the Governor and Company, op. cit., vol. 4, part 2, p. 143.

The Court of Assistants "holden att Boston" October 18, 1631 (just a year before the first fornication citation above) ruled as follows: "It is ordered, that if any man shall have carnall copulacōn with another man's wife, they both shalbe punished by death."⁴⁰ So important, then, was the integrity of the family in the colonial structure, that any in-roads upon it were capital offenses. The graveness of the transgression to the early magistrates can be more fully appreciated when one considers their demand for the death penalty in connection with the scarcity of individuals and their indispensability to the settlement.

The Records cite no cases of persons convicted under this statute. But on March 12th, 1637 or 1638 at "A Generall Court, held at Newetowne", it is ordered "...that the 3 adulterers, John Hathaway, Robrt Alen, & Margaret Seale, shalbee severely whiped, & banished, never to returne aaine,⁴¹ vpon paine of deathe." At the same time the Court confirmed and ordered promulgated the previous law against adultery (Oct., 1631).

This sentence, then would seem to be a modification of the original, despite the confirmation of the latter by the Court, since it did not call for death in the first instance (unless the combination of a severe whipping and banishment meant almost certain death), but only on the return of the "sinners" to the fold of civilization.

The seeming contradiction in the position of the Court on the penalty for adultery is resolved a few years later when, on Oct. 7, 1640, the Court rules that "The first law against adultery, made by the Courte of Assistants

40. Records of the Governor and Company, op. cit., vol. 1, p. 92.

41. Records of the Governor and Company, op. cit., vol. 1, p. 225.

@ 1631, is declared to bee abrogated; but the other, made the first m^o
 1637 or 1638, by the Generall Court, to stand in force."⁴²

A sequel to this law was enacted on Oct. 16, 1660 by the General Court⁴³
 when it ordered that any person remaining in the community after a sentence
 of banishment on pain of death had been pronounced "...shall...have a legall
 triall...& shall accordingly be sentenced to death...vnlesse...reprived in
 the meane time."

Some of the adultery cases, as would be expected, were difficult of
 decision, and the responsibility of them was passed from the Court of Assis-
 44
 tants to the General Court. One such case was decided on Nov. 1, 1654:

"A case of difficulty was retourned from the last Court of Asistants
 to the Gennerall Court, and the quaestion was thus presented for resolution:
 A marrjed woman, with hir husband, in another mans house, whom in short tjne
 she, contrary to hir husbands liking and comand, enters into to much famill-
 iaritje with at vnseasonable tjmes, whom she also seemes to affect more than
 hir husband; hir husband, greiving at hir carriage, departs from hir; and
 after his retourne was brought to bed of a strong, liuely, perfect child,
 (that presently after its birth suckt and crjed,...) fower weekes and five
 dajes short of 40 weeks. The single person, being accused and imprisoned on
 suspitjon of adultery with the marrjed woman, giving bayle for his appearance,
 ranne away. The quaestion is, whither heere be two wittnesses, or that which
 is aequipolent to it, to convict the sajd woman of adultery. The Court
 resolved it on the negative, that there are not two wittnesses in the case,
 nor any thing that is aequipolent thereto."

Another case, decided earlier in the same year (May 14, 1654), had a
 45
 less happy ending for the parties concerned:

"The Magists, not receiving the verdict of the jury in the case of
 Daniell Gunne and Alise Cheater, on suspition of adultery, it came of course
 to this Court to be determined. The Court, on pvsall of the deposicons in
 the case, and examination of the sajd Alise Chyater, now accused for comitting
 adultery wjth Daniell Gunne, they doe not find them to be guilty of the fact
 according to lawe, but finding hir guilty of much shamefull and vnchast

42. Records of the Governor and Company, op. cit., vol. 1, p. 301.

43. Records of the Governor and Company, op. cit., vol. 4, part 1, p. 433.

44. Records of the Governor and Company, op. cit., vol. 4, part 1, pp. 212-213.

behaviour, sentence hir to be seriously admonished, and to stand tjed...the whipping post, at least one hower and then discharge hir, that shee may repaier home to hir husband; and that the said Gunne, when he is recouered, & is capable of it, shallbe whipt."

Strange, indeed, must have been the reaction of the native Indians to whom the benefits of the Puritan code were generously extended. We read of
46
the following case in point under the date of Oct. 23, 1668:

"Whereas Sarah Ahaton, an Indian squa, is now in prison for adultery, & there being seuerall considerations about it, wherein much difficulty appeares, it is ordered, that this case be heard by the Generall Court on 27 instant October, at one of ye clocke. The Court at ye time sent for the sajd Sarah Ahaton out of prison, & being at the barr, & hearing what was produced agt her, vpon the question relating to the said Sarah Ahatons confession of comitting adultery wth Joseph, an Indian, whither on what hath been heard, as the case is circumstanced, she should be put to death, it was resolved on the negative; and it is further ordered, that the sajd Sarah Ahaton shall, on the 29th instant, stand on the gallows after the lecture in Boston, wth a roape about hir necke one hower, that then the marshall generall shall cause her to be tooke doune & returned to prison, & comitted to the Indian constable of Waticke, who, on a publick day, by order from Capt. Gookin, shall severely whip hir, not exceeding thirty stripes, & yt she pay all charges for the prosecution, to be allowed by Capt. Gookin, (hir whipping to be deferred till after the time of hir deliuary, if she be wth child, as is reported)."

A court decision of 1673 in the case of Ruth Read indicates a modification in the penalty for adultery, for in this instance it is ruled that if the woman refuses to remain banished, her lot will not be death upon legal trial, but rather public announcement of her deed plus a severe whipping. This decision injected a new note in the penalty for adultery, - that of wearing a label in public view. The case is of such an interesting nature
47
as to merit quotation in full:

"Ruth Read being Comitted to prison & brought to the barr to Answer for that hauing binn aboue fower yeares in England absent from hir husband and bringing wth hir a child of About two yeares old Affirming that shee received it at Brandford in England that Augustin Lyndon who changing his name to John Rogers & hirselle by the name of Rebeckah Rogers as she also Affirmed

46. Records of the Governor and Company, op. cit. vol. 4, part 2, pp. 407-408.
47. Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692, vol. 1. Printed under the supervision of John Noble, published by the County of Suffolk, 1901, p. 10.

• • •

betweene whom seuerall letters wickedly (as if man & wife..had passed between them which are on file, and that John Rogers told hir the child's name was John Rogers, and most Impudently returning to these parts Imposing the said child on hir husband Wm Read The Court sentenct the said Ruth Read that named hirselfe Rebeckah Rogers if found in this Colony two months after this date that shee stands in the markett place on a stoole for one hower wth a paper on hir breast wth ys Inscription THVS I STAND FOR MY ADVLTEROVS AND WHORISH CARRIAGE and that on a lecture day next after the lecture and then be seuerely whipt wth thirty stripes..."

We find a similar digression from the penalty of banishment under pain of death, as far as the woman is concerned, in the case of Mary Gibbs in the year 1675.⁴⁸ The co-defendant received a multiple punishment, - "to goe from hence to ye prison & thence to be Carrjed to the Gallows & there wth a Roape about his necke to stand half an hower & thenc tjed to the Carts tajle & whipt seurely wth thirty..nine..stripes and that he be banished this Jurisdiction & kept in prison till he be sent away paying the prison chardges.." Mary, on the other hand, for the same deed ("Adultery...contrary to the peace of our Soueraigne Lord the king his Crowne & dignitye the lawes of God & of this Jurisdicon") received the same penalty, "banishment excepted."⁴⁹

This case, together with that of Daniell Gunne and Alise Cheater, present the first evidence of discriminatory "justice", in which one sex receives more favorable consideration than the other. The action favoring the female sex in 1654 and 1675 has since undergone a complete turn-about, however, for today legislation in this realm is more severe in its impositions on the women than it is on the men. This phase, however, will be explored later.

The modern court practice of returning a verdict of not guilty of the charge with which the individual is indicted,⁶ but rather of finding him

48. Records of the Court of Assistants, op. cit., vol. 1, pp. 56-57.

49. See above, pp. 22-23.

guilty of a lesser offence, was not unknown to the early Courts of Assistants.

This practice was indicative of a growing "leniency" in contrast with the earlier verdicts. A case in point is that of Elizabeth Broune, decided on

50

Sept. 5, 1676.

"Elisabeth Broune the wife of Wm Broune...was alike Indicted...for not hauing the feare of God before hir eyes & being instigated by the Diuill... did Comitt adultery wth Thomas Daus Contrary to the peace of our Soueraigne Lord the King his Croune & dignitje the lawes of God & of this Jurisdiction... the Jury brought in their verdict they find hir not legally Guilty according to Indictment but doe find hir Guilty of Prostituting hir body to him to Comitt Adultery. The Court pervsing this sentence to order yow to Goe from hence to the place from whence yow Came & thenc on the next lecture day by the marshall Genll to be Conducted to the Gallows & by the executioner to haue a Rope tied about your neck to ye Gallows & so there to stand one hower & thenc to be tyed to the Carts tayle & seuerely whipped not exceeding thirty nine stripes to the prison & thr left till the next lecture day at Charls Toune & then Carrjed ouer & be there alike seuerely whipt wth thirty stripes & discharging yor prison ffees yow are dischardged."

One further illustration is the decision in re Sarah Bucknam, Sept. 13,

51

1676.

"Sarah Bucknam...found by the Jury...not Guilty according to Indictment [Adultery] but Guilty of like vncivill Accompanying wth Peter Cole being in bed together had the like sentenc pronounc agt hir stand on Gallows one hour with halter, be tied to carts taile, whipped 39 stripes, and pay prison fees ."

This practice of evading severe punishment by punishing the defendant for a lesser offence than that charged in the original indictment, gradually gave way to inflicting the lesser punishment for the original charge itself.

To wit, on March 5, 1677 Abigaile Johnson, found guilty of adultery, was punished by standing on the gallows for one hour with a rope about her neck, by being tied to the carts tail and whipped 39 stripes "on naked body...well

52

layd on", and by a sojourn in prison.

50. Records of the Court of Assistants, op. cit., vol. 1, pp. 70-71.

51. Records of the Court of Assistants, op. cit., vol. 1, p. 74..

52. Records of the Court of Assistants, op. cit., vol. 1, p. 115.

A new note is injected into Puritan justice with the calling for a license to return to the community after banishment upon conviction of "whoredome & of hauing a Bastard child in hir husbands absence." The case is that of Elinor May,⁵³ and the punishments in toto consisted of being "tyed to a Carts Tayle & whipt vpon hir naked body from the Prisson to the place of hir aboad not exceeding thirty nine stripes well & seuerely layd on, and also to depart out of the Toune of Boston wth in tenn dayes...after hir Correction [sic!] and not to retorne againe wthout licence from the Gounor or two magistrates..."

Undoubtedly one cause for many of the unorthodox sex relations current in the colonial community was the separation of husbands and wives, when only one of a couple journeyed to the new land, and the other preferred to remain or was deserted in England. So great a problem did these separated parties riase, that the General Court at Boston felt obliged to make the following statement regarding "measures for the prevention of adultery" on Nov. 11,⁵⁴ 1647:

"Whereas diuers married psons, both men & woemen, living wthin ys iurisdiction, whose wives & husbands are in England or elsewr, by meanes wrof they live undr great temptations, & some of ym comit lewdnes & filthines here amongst us, & othrs make love to woemen, & attempt marriage, & having attained it, some of ym live under suspition of uncleannes, & all of ym great dishonor to God, reproach to religion, comon wealth, & churches, it is yrfore ordred, by ys Corte, & ye authority yrof, (for pvention of all such future evils,) yt all such married psons as aforesaid shall repair to their relations, by ye first oportunity of shiping, upon ye paine or poenalty of 20 t, except they can shew iust cause to ye contrary to ye next County Corte, or Corte of Assistants, to be holden at Boston, afr they are sumoned by ye cunstable yr to appeare, who are hereby required so to do, upon paine of 20s for his neglect; pvided that those ordr do not extend to such as are come ovr to make way for their families, & are here in a transient way onely, for trafique or marchandize, for some small time."

53. Records of the Court of Assistants, op. cit., vol. 1, p. 138.

54. Records of the Governor and Company, op. cit., vol. 2, pp. 211-212.

Until 1632 there existed in the Massachusetts commonwealth no institutions in which individuals could be confined whose aberrations from the straight and narrow path brought them to the magistrates' eye. The punishments inflicted were all of a non-institutional nature, consisting of public whippings, banishment, sitting on the gallows with a rope about the neck, fines, being tied to a whipping post, etc. On Oct. 3, 1632 the Court of Assistants ordered to be built a "Howse of Correction." And in May, 1656, they authorized the erection of similar "Howses of Correction" in each county. The philosophy of treatment in these early "correctional" institutions was plainly stated in the court order which created them: 55

"...the select men of the towne where such howse is appoynted shall haue liberty & power to procure, in a volluntary & prudent way, some competent stocke of hempe, flax or other materialls, & upon account to committ the same into the hands of the master of the howse, appointed by the County Court to be imployd at his discretion by the labours of such delinquents as shall from time to time be committed to him by authoritie; and that the stocke being in value or kind pserued to such as put in the same, all the benefitt atayned by the labour of the psons committed shalbe to the vse of the master, allowinge only so much as will keepe the delinquent with necessary bread & water, or other meane food *[italics mine]*, out of the same, as 4d out of the shillinge earned by his or her labour; and that, at the first cominge into the howse, the master of the correction howse himselfe, or whom he shall pcure, or, in want of a fit person, the comon corrector *[italics mine]*, in allowance by the Court, residinge in the towne, shall whipp the delinquent not exceedinge ten stripes; and after that he shall imploy him or her by dayly stint, and if he or shee be stoborne, disorderly or idle, & not pforme their taske, & that in good condition, it shalbe in the masters power to abridge them of part of their vsual food, or giue them meet correction *[italics mine]* as the case shall require, from time to tyme. It shalbe also in the power of one magistrate to committ idle psons, stuborne psons agaynst them that haue authoritie over them, runaways, common drunkards...common night walkers & wanton psons, as tending to vncleanes in speeches or actions, & the like."

"Correction", then, in the sense used by the magistrates meant plain and simple whipping and hard labor.

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The institution of commercialized vice, as distinguished from the type of sex activity already discussed (that involving only the two individuals concerned, as in adultery or fornication) reared its ugly head early on the colonial scene. In 1672 the General Court acted to combat this evil:

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"Whereas, by sad experience, it is too obvious to all our people & others that the sinn of whoredom & vncleanes growes amongst vs, notwithstanding all the wholesome [sic!] lawes made for the punishing & suppressing such land defiling evils; and whereas there is of late too just ground to suspect a greater evill growing vpon us by the bold & audacious presumption of some to erect a stews, whore house, or brothell house, for the nourishing such wickednes, the encrease of which evil, if not timely prevented, may tend to the debauching multitudes of persons, & tend to the vtter ruine of their estates, soule & body, it is therefore ordered by this Court & the authority thereof, that if any person, male or female, shall presume to set vp or keepe any such house whercin such wicked lusts may be nourished & whoredom comitted, euery such baud, whore, or vile person...shall be severely whipt at the carts tajle, thro the streets where such offenc or offences hath binn comitted, wth thirty stripes, & thence to be comitted to the house of correction, by the master of said house to be kept with hard fare & hard labour, by dajly taske, and in defect of their duty, to be seuerely whipt euery night wth ten stripes, and once at least in euery weeke the said baud & hir accomplices in such vile & sinfull courses, the baud to be their leader, & the other, two & two, in hajre frocks & blew capps, by the executioner to be fastned to a hand cart, and forct along to draw all the filth lajd vpon the cart thro the streets to the seaside, going to the gallows in Suffolke, & in all other countjes where the Court of each shire shall appoint, & so returned to the house of correction, to be alike kept wth hard fare & labour, according to the custome of the house, during the Courts pleasure there to remajne."

In determining the possible relationships which might exist between the social and economic structure and the above-mentioned laws, one is impressed by several outstanding facts.

The first of these is that the institution of the family was basic and indispensable in meeting the pioneer problems of production and consumption, and that production was subject to governmental compulsion in

56. Records of the Governor and Company, op. cit., vol. 4, part 2, p. 315.

those branches of activity where it tended to wane. The colonial family developed its peculiar patriarchal form and nature as the result of the free-hold land tenure system of early New England. Marriage was, in many cases, a plain and simple "business proposition" in which economic considerations were paramount.

We have learned that colonial marriage was thoroughly enshrouded in a multitude of legal straight-jackets, all for the purpose of maintaining it intact. We have seen the violent reaction of the Puritan clergy to any inroads upon family unity in its special and private interpretation of "God's will", in its translation of moral standards into a criminal code. Their progressive punitive demands for the offense of adultery were: death (1631), banishment upon pain of death (1637 or 1638), prison and whipping (1668), public announcement and whipping (1673), prison, exposure and whipping (1675). We note, then, a gradual softening of the harshness of the law with the corresponding softening of the rigours of pioneer life. At the same time we note a gradual lessening of the originally complete political and spiritual control by the Puritan clergy. This, too, could not help but influence the nature of the legislation along more humane lines.

From this beginning, then, spring the Massachusetts laws with reference to sex offenders (confined in this study to women). Modifications in these laws occurred early in colonial history, and we shall trace still further modifications as the colony grew. But nothing has been able to alter the underlying puritanical concept implied in these laws which took shape when the Puritan oligarchy wove its morality into the criminal law, - namely, that anyone who digresses from their morality is a criminal.

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The period of Massachusetts history dating from 1690 to 1713 saw little change in the social and economic characteristics of the period already described. For the bulk of the population the home remained the prime economic force in the colony's existence. "The dominant note in this social life was that of domesticity. In the somewhat romantic atmosphere with which Americans clothe this early period, it is perhaps the peace, simplicity and unity of family life which contribute the elements of greatest charm...the most significant arts and crafts were those devoted to fashioning the furniture and utensils of the household."¹ Adams goes on to say that of the predominant agriculturist class, the majority "tilled small farms largely by their own labor and that of the members of their households...numerically the great bulk of the people were living near the lower end of the social scale... At that end the necessity of utilizing the physical labor of women and children added its heavy weight to inherited instinct so as greatly to strengthen the position and organization of the family as a social unit."²

The family institution as a social unit received additional strengthening as a result of the existence of a limited supply of free land which offered asylum to the poor. Although the available supply of this land was decreasing rapidly as the result of the accumulation of large holdings by a few speculators or wealthy individuals^{and} the danger from Indian attack too far from the settlement, never-

1. Adams, J.T., Provincial Society, op. cit. p. 10.

2. Adams, J.T., op. cit., p. 11.

theless, it was able to offer an outlet to many needy farmers. Adams tells us that this supply of free land "had prevented the growth of a distinct wage-earning class."³ We will see later that the development of the factory system with its wage-earning class exerted a sharp influence in breaking up the unity of the colonial family.

As for manufacturing, whatever little there was existed on a very small scale, most of it being carried on within the home. The woolen industry was gaining considerably at this time. The combination of scarcity of skilled labor, poor transportation and lack of sufficient accumulated capital all worked together to postpone the establishment of factories until a later date. The household industries received added stimulus as a result of the wars with the Indians and the French which brought economic depression, increased taxes, and decreased business to the colony. "Everywhere there was great economizing with the consequent stimulation of household industry and decreased profits for the merchants."⁴

However, there were at this early period forces at work which created a tendency away from the original family unity. One of these was the passage of laws in Massachusetts confirming the division of the land of an individual who died intestate among all his survivors. This law was in sharp contrast to and out of fear of the English system of land inheritance, - the law of primogeniture, and did much to inaugurate an equality for sons and daughters.⁵ In cases where the head of the family left a will,

3. Adams, J.T., op. cit., p. 16.

4. Adams, J.T., op. cit., p. 54.

5. Adams, J.T., op. cit., p. 16. Also see Goodsell, op. cit., pp. 461-462.

he sometimes divided the land evenly among his children, in contrast, again, to the English system of entailment. Weeden tells us that in many cases a system of partial primogeniture still prevailed, and that sons usually⁶ received preference over daughters. "History makes plain that the unbroken existence through generations of a family homestead and family lands has acted as a strong bond holding the family members together and deepening⁷ family sentiment."

The average farm in the more populated sections at the beginning of the⁸ eighteenth century was from ten to thirty acres in size, and divided into plow-land, pasture, woodland and meadow. Its cultivation, though wasteful and unscientific, yielded wheat, barley, oats, rye, peas, beans, squash, pumpkins, potatoes, corn, apples, plums, pears, cherries, etc. All of this produce, however, was kept at a purely subsistence level because of the lack of a market (outside of the cities or towns). There was no foreign⁹ market for food, little inter-colonial trade, and no class of labor separate from the soil to purchase the produce.

In addition to raising the crops above-mentioned, the farmers bred stock consisting of cows, calves, oxen, sheep, hogs, horses and colts. The horses had become an important article of trade with the West Indies. The wood-lots on the farms were vital for domestic use and export purposes. England's iron and ship-building industries both demanded wood to feed them,

6. Weeden, W.B., op. cit., vol. 2, p. 544.

7. Goodsell, W., op. cit., p. 462.

8. cf. Adams' description of an invoice for the town of Newbury, Mass., in 1688, op. cit., p. 29.

9. England was now able to undersell the colonists in the wheat trade to the West Indies.

and meanwhile, the ship-building industry and shipping in Massachusetts itself were expanding rapidly and leading the other colonies.

Beyond these activities, fur trading with the Indians in exchange largely for rum, guns and ammunition, and animal hunting for purposes of supplying food and clothing were both carried on. Fishing, too, was an important pursuit. There were also iron ore, copper and limestone workings on a small local scale in the colony.

Adams tells us that, despite these many activities, the colonists led a "hand-to-mouth" existence. "In spite of their being agricultural communities and the extent of their household industries, the colonies were far from being self-sustaining...Throughout the seventeenth century and until well into the eighteenth, it was a constant struggle to find goods suitable for export from America to pay for...imports [from England] ¹⁰."

After the formal declaration of peace in the Treaty of Utrecht, 1713, Massachusetts, in common with the rest of the colonies, entered upon a twenty-year period of expansion, inflation and speculation. This period saw the laying of the ground-work for many colonial fortunes and gave birth to a "get-rich-quick" aristocracy of merchants and land-owners. It also saw the creation of new and characteristic material products in the way of the more commodious Georgian architecture and a more elaborate costume for the new wealthy class. Their social life, too, was imbued with a new lightness which found expression in dancing and card-playing as sources of social

10. Adams, J.T., op. cit., p. 47.

entertainment.¹¹ "The general improvement in living and the increase of comforts...manifested itself in the gradual use of carriages."¹² Weeden also tells us that "The second quarter of the century established a much higher standard of comfortable living than the first generations of colonists could afford."¹³

The expansion in business after 1713 took place largely in the realm of commerce, and to a considerably lesser degree in manufacturing. The commerce which fed the growing industries of New England "...developed the maritime traders of the second colonial period into the merchants of the third period. It was a time of enlargement. The ketch became the schooner; the petty ventures of John Hull extended into the larger operations of Peter Faneuil."¹⁴ As the result of colonial legislation, shipping tended to be concentrated in large centers and urban populations leaped upward. More and larger ships became the rule. English capital was brought in to supplement that of Boston merchants, and this made possible broader pursuits.¹⁵ "The great increase in population and the extension of the frontier and the area under cultivation were irresistible forces in increasing the total produce of the colonies, and consequently the need for enlarging markets, swelling the volume of commerce, and the opportunities for profit."¹⁶ Enterprizes on a joint-share basis and insurance companies sprung up.

11. Adams, J.T., op. cit., p. 76.

12. Weeden, W.B., op. cit., vol. 2, p. 508.

13. Weeden, W.B., op. cit., vol. 2, p. 509.

14. Weeden, W.B., op. cit., vol. 2, p. 553.

15. Weeden, W.B., op. cit., vol. 2, pp. 553, 555.

16. Adams, J.T., op. cit., p. 231.

Insurance rates were excessively high, however, and rather than pay them, merchants often preferred to distribute their risk "through joint ownership" over many ships. "Almost all insurances were underwritten by several parties joining in contract."¹⁷ The risks of trade were great because of the large numbers of privateers and pirates, who reached their biggest proportions¹⁸ in 1723.

In the realm of manufacturing, developments were largely on a household level. Weeden tells us that "It was this domestic activity, this laboring industry in house, farmstead, and village, which supplied the fisherman, and pushed out sailors into the ventures of foreign commerce."¹⁹ In 1718 the Province of Massachusetts placed a duty on home manufacturing, but in spite of this and two generations of previous restrictions by England, the King had to be informed that "...Massachusetts has always worked its wool into coarse cloths, druggets and serges...for the use of the meanest sort of people."²⁰ In 1731 the Board of Trade was informed by the Governor of Massachusetts that one-third of the woollen clothes worn by the Massachusetts people were home-made, and two-thirds were imported from England. "Allowing for the official interest in diminishing the home manufacture", Weeden says, "it would appear that the increase of a more generous living,²¹ which all evidence shows, was put into imported luxuries."

In 1726 Massachusetts gave a monopoly and bounties to a canvas manu-

17. Weeden, W.B., op. cit., vol. 2, p. 461. Weeden describes the beginnings of marine insurance in 1724, when a broker obtained "...a guaranty of several persons, who each underwrote a particular sum, and thus became the underwriter of that portion of the risk," op. cit. p. 586.

18. Weeden, W.B., op. cit., vol. 2, p. 560.

19. Weeden, W.B., op. cit., vol. 2, p. 492.

20. Weeden, W.B., op. cit., vol. 2, p. 493.

21. Weeden, W.B., op. cit., vol. 2, p. 495.

facturer, and in 1739 increased her special considerations to hemp-growers.

The Board of Trade report of 1731-1732 reveals six furnaces and nineteen forges in New England, with southeastern Massachusetts supplying the bulk

of the ore for them.²³ Scythes (1715), heavy iron work (1720), fishhooks (1717), nails, rods, kettles and pots (1710) and guns (1740) were all being

manufactured on a small scale.²⁴ The exportation of small but increasing amounts of pig iron from New England to the mother country in the years

1734-1745 would indicate that iron was being produced in quantities beyond domestic needs.²⁵

The most important change in the manufactures of New England in the first half of the eighteenth century was in the field of rum distilling.

"The eighteenth century brought in the manufacture of New England rum with far-reaching consequences, social as well as economical."²⁶ This rapidly increasing business reached its climax in 1735. It, along with other businesses, was subject to the hurts inflicted by inflation and badly managed currency. Inextricably bound up with the rum-distilling business was the expanding slave trade of Massachusetts.

An important pursuit responsible for a considerable proportion of the increase in wealth of this period was the slave trade carried on by Massachusetts merchants until the Revolution. "The merchants of Boston quoted

22. Weeden, W. B., op. cit., vol. 2, p. 496.

23. Weeden, W. B., op. cit., vol. 2, p. 497.

24. Weeden, W. B., op. cit., vol. 2, pp. 496-500.

25. Weeden, op. cit., vol. 2, p. 501.

26. Weeden, W. B., op. cit. vol. 2, p. 501.

negroes, like any other merchandize demanded by their correspondents."²⁷
 Molasses and sugar from the West Indies, distilled into rum in Massachusetts were exchanged in Africa for slaves. "The quantity of rum distilled was enormous, and in 1750 it was estimated that Massachusetts alone consumed more than 15,000 hnds. molasses for this purpose."²⁸ "All society was fouled in this lust; it was inflamed by the passion for wealth, it was callous to the wrongs of imported savage or displaced barbarian...Cool, shrewd, sagacious merchants vied with punctilious, dogmatic priests in promoting this prostitution of industry."²⁹

The abolition of government restrictions (existent since 1664) on the French West Indies trade in 1717 gave this formerly illicit trade a fresh spurt.³⁰ "Great fortunes were made in every kind of illicit traffic in the colonies", and violations of the Navigation Acts were well known by British officials.³¹

This sudden growth of wealth on the one hand saw a corresponding decline in the status of the masses of indentured servants on the other end of the scale. "...the increase in wealth and the growing distinctions between those who possessed it and those who did not tended to lower the servant's position

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27. Weeden, W.B., op. cit., vol. 2, p. 456.
 28. Weeden, W.B., op. cit., vol. 2, p. 459.
 29. Weeden, W.B., op. cit., vol. 2, p. 472.
 30. Weeden, W.B., op. cit., vol. 2, p. 554.
 31. Weeden, W.B., op. cit., vol. 2, p. 557.

The first part of the paper discusses the importance of the study and the objectives of the research. It also mentions the scope of the study and the limitations. The second part of the paper discusses the methodology used in the study. It mentions the data sources and the data collection methods. The third part of the paper discusses the results of the study. It mentions the findings and the conclusions. The fourth part of the paper discusses the implications of the study. It mentions the practical implications and the theoretical implications. The fifth part of the paper discusses the future research. It mentions the areas for further research and the suggestions for future studies.

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as compared with the previous century when all alike were more under the
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leveling influence of the frontier." In the words of Weeden, "...the
sturdy men of affairs were taking on the manners of a gentry. The black
laboring-man had become a body servant; for wherever there was wealth,
³³
luxury crept in." And in 1710 we find the Massachusetts legislature
offering a forty shilling bounty to any ship captain for each male servant
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(8 to 25 years of age) he may bring to the colony. And "as late as
1706 Massachusetts provided for the sale of Indian children under 12 years
³⁵
of age taken in war." An earlier Massachusetts law (1698) ruled that the
³⁶
child of a slave became a slave.

Not yet greatly affected by these new influences already working im-
portant changes on two groups in colonial society, the small farmer still
existed as a domestic unit of production and consumption. However, we have
already cited the tendency toward land accumulation which was limiting the
available land supply. Then, too, the land grant policy of the colony was
undergoing a transformation from one of free-holding to one of "granting
or selling large tracts to individuals or companies who held them for
³⁷
speculation." Similarly, the growing (though not yet predominant)
system of long-term leases instead of sales worked in a direction away from
the original free-holding system.

Meanwhile, competition resulting from the increasing population on
the same territory "forced into lower economic rank, even if not into
abject poverty, large numbers of those who proved less well able to take

32. Adams, J.T., op. cit., p. 100.

33. Weeden, W.B., op. cit., vol. 2, p. 509.

34. Adams, J.T., op. cit., p. 98.

35. Adams, J.T., op. cit., p. 101.

36. Adams, J.T., op. cit., p. 107.

37. Adams, J.T., op. cit., p. 110.

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care of themselves under the harder test." Thus, we find the contrast growing more marked between the group benefiting from the increase and concentration of wealth on the one hand, and those less fortunate individuals who met only with economic sorrow.

The by-products of the wars up to the year 1763, were increasing commerce, more ships and larger cargoes for the Massachusetts colony. This same period saw the rise of speculation and mercantile business together with its control of local politics. The all-powerful combination of lawyers, capitalists and land-owners was taking shape.

Weeden tells us that "All the New England seaports took part in... private war [privateering] and commercial speculation [during the Spanish and French wars] ³⁹. Boston and Salem were well represented..." And describing the smuggling and illegal traffic indulged in by the New England merchants "as coolly as they took snuff in the streets of Boston", ⁴⁰ he observes that "...the commercial business of New England went forward under different forms in the several governments, but always toward one end. That end was money and profit, parliamentary law and crown administration to the contrary notwithstanding." ⁴¹ He goes on to say that despite legal prohibitions, "...the American colonies had developed interests in every country and across every sea; had accumulated wealth more speedily than almost any

38. Adams, J.T., op. cit., p. 250.

39. Weeden, W.B., op. cit., vol. 2, p. 655.

40. Weeden, W.B., op. cit., vol. 2, p. 658.

41. Weeden, W.B., op. cit., vol. 2, p. 660.

[illegible]

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other people."

These wars and activities lined the pockets of the merchants, and at first meant high wages for labor. But the high prices, currency inflation and heavy taxes worked hardship on those with fixed incomes. The end of the war brought hard times to the farmers, when farm prices came tumbling down. With the subsequent falling land values in the old settlements, there came a fresh pioneer spurt of the discontented and oppressed elements.

These same years saw little change in manufacturing. Spinning wheels and looms could be found in most of the homes, and for the most part, the cloth spun on them was used in home consumption or in small neighborhood exchanges.

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Shoe-making had "...hardly developed beyond other domestic manufactures until the middle of the eighteenth century."

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Since 1731 Massachusetts had made progress in the manufacture of native iron, especially in the production of nail-rolls which were essential to domestic industry, and in 1750 she led in the possession of forbidden rolling mills.

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"A sign of the times indicating the passing of the old simple conditions may be found in the marked decrease in marriage. Both spinsters and bachelors, so rare in the early days, now became more numerous...With the passing of almost universal marriage came an increase in prostitution in the larger towns."

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Meanwhile democratic forces were at work aiming at a separation of the church and state, and the extension of the franchise. "In...Massachusetts..."

42. Weeden, W.B., op. cit., vol. 2, p. 670.

43. Weeden, W.B., op. cit., vol. 2, p. 679.

44. Weeden, W.B., op. cit., vol. 2, p. 682.

45. Weeden, W.B., op. cit., vol. 2, pp. 683-684.

46. Adams, J.T., op. cit., pp. 315-316.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry must be clearly documented, including the date, amount, and purpose of the transaction. This ensures transparency and allows for easy verification of the data.

In the second section, the author outlines the various methods used to collect and analyze data. These methods include direct observation, interviews with key personnel, and the use of specialized software tools. Each method is described in detail, highlighting its strengths and limitations.

The third section provides a comprehensive overview of the results obtained from the data collection process. It presents a series of tables and graphs that illustrate the trends and patterns identified in the data. The analysis shows that there are significant variations in performance across different departments and time periods.

Finally, the document concludes with a series of recommendations based on the findings. These recommendations focus on improving efficiency, reducing costs, and enhancing the overall quality of the data collection process. The author suggests implementing specific measures to address the identified issues and to ensure that the data remains accurate and reliable.

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the Congregational, or town, church was the legal ecclesiastical establishment to which the taxpayers were obliged to contribute support whether members of the congregation or not.⁴⁷ But the church had failed to establish itself in the hearts and life of the colonists as an indispensable institution, and in this period its teachings were losing weight. "The separation between close church life and scattered economic life concentrated in families - deprecated by Governor Bradford in the beginning - had accomplished itself."⁴⁸ The Massachusetts Charter of 1691, which included Massachusetts in the list of royal governments as the result of changes in the English government and colonial policy, placed the qualifications of voters on a land or personal property ownership basis. Possession of land to the value of 40 shillings a year, or personal property worth 50 pounds Sterling entitled one to vote.⁴⁹ Congregational church membership was no longer a suffrage requisite. However, this tendency to increase the suffrage by admitting personal property on an equal basis with land, still did not extend the suffrage to a very broad group. For example, in 1703, 206 out of a total population of 7000 in Boston were entitled to vote for representatives.⁵⁰ "...whole classes such as laborers, artisans, servants, fishermen, the smaller shopkeepers and others were ...automatically excluded."⁵¹ The Charter also provided for a Governor appointed by the Crown, an upper legislative body elected by the lower house (in turn elected by the voters) with the approval of the Governor.

47. Adams, J.T., op. cit., p. 17.

48. Wooden, W.B., op. cit. vol. 2, p. 548.

49. Adams, J.T., op. cit., p. 19.

50. Adams, J.T., op. cit., p. 21.

51. Adams, J.T., op. cit., p. 21.

This separation of church and state had far-reaching and important effects in the field of education. The first schools in the colony came under the jurisdiction of the town government, which was at that time in close touch with the clergy. With the divorcement of church and state,⁵² thanks to the Charter of 1691, the schools were left under the jurisdiction of a secular town government. (However, this divorce probably did not become absolute for some time if we can rely on Weeden's authority. He tells us that "The ecclesiastical and political machinery of the time ran in close contact. Worcester, in 1724, holds a town meeting to see if in choosing a minister the 'town will concur with the church's choice.' The good Puritans generally preferred ecclesiastical to civil law."⁵³) The extent of education at this period (though broader than elsewhere on the continent) was, however, very narrow. New England girls were fortunate to learn to read and write. Boys fared a little better, with arithmetic sometimes on their learning program. Laws governing apprenticeship required that children learning trades and poor children without homes be taught the elements of reading and writing.⁵⁴

The tendency of the colonists to draw away from the originally complete domination of the church was developed still further now. "...the first fervor of religious enthusiasm had long since evaporated, and the growth of other interests tended to dislodge the ministers from the remarkable position which they had occupied."⁵⁵ Secular careers, promising much in the material realm, were now attracting the most capable men just as the ministry had drawn the cream of the colony in earlier years. The clergy's

52. Adams, J.T., op. cit., p. 134.

53. Weeden, W.B., op. cit., vol. 2, p. 515.

54. Adams, J.T., op. cit., p. 137.

55. Adams, J.T., op. cit., p. 63.

position in society was rapidly falling after 1700; no longer were ministers regarded as "Angels of God." "...conditions were altering and ...many things had combined to lower the prestige enjoyed by the clergy."⁵⁶

Among the forces contributing to the decline in the power of the church, was the splitting up of the single church with the growing population of a town. "So many exceptions had to be made from the old rule that the church rapidly tended to become divorced from the political town and to become rather an affair of the ecclesiastical parish."⁵⁷ The result was the splitting away of groups from the church and the organization of different sects. However, "...in Massachusetts...all tax payers had still to contribute to the established Congregational Church, and thus, if they belonged to some other, had to pay doubly for religious support."⁵⁸

This same period witnessed the germination of the rationalistic and scientific spirit which, following the trend of the times, was to spring up in the native American population, replacing the former theological approach. The transition in the New England colonies was not a gradual one, but, on the contrary, was "marked by a spiritual crisis of the first magnitude,"⁵⁹ as evidenced in the horrible and fanatical witch trials of 1692. In the development of this new ideology we find in 1701 such phenomenon as a layman, Thomas Brattle, successfully answering in a rationalistic fashion Cotton Mather's Wonders of the Invisible World. "That a merchant should worst one of the most noted clergymen in all New England and carry the minds of the people with him was surely a portent of coming change. His book...was a signal gun of a new struggle."⁶⁰

56. Adams, J.T., op. cit., p. 63.

57. Adams, J.T., op. cit., p. 153.

58. Adams, J.T., op. cit., p. 154.

59. Adams, J.T., op. cit., p. 120.

60. Adams, J.T., op. cit., p. 120.

Similarly Reverend John Wise in 1717 published a book in which "... [his] political doctrines...show complete divorce from the religious and biblical sanctions which the earlier New England leaders had found so essential. Just as colonial interests were becoming economic rather than religious, so colonial thought was becoming political rather than theological." 61

Wise favored a government based on free-contract and democracy, both "immeasurable advances from the Puritan thought of a generation earlier." 62

But much as the influence of the church was being shaken in government, education and philosophy, the Puritan influence succeeded in leaving its mark on the legal concepts of this era which were to last a long while. This influence asserted itself in the form of emphasis on the individual, his rights and acts and property, in contrast to an emphasis on society as a whole. "Rugged individualism" received its flying start under this aegis. Further, a new concept in which legal principles were believed to arise from immutable laws of nature became wide-spread. The result of this new conception was that laws suitable to the passing agricultural economy of the colony were regarded as unchangeable for all future time. 63

The years 1730-1744 saw a period of religious revival with outbursts of religious enthusiasm. Evangelical groups shook the old established church and injected it with the spirit of democracy. This period marked the beginning of the humanitarian movement in the colonies. 64

Did the ~~the~~ rigid religious teachings of New England breed a superior

61. Adams, J.T., op. cit. p. 121.

62. Adams, J.T., op. cit. p. 121.

63. Adams, J.T., op. cit. pp. 277-278.

64. Adams, J.T., op. cit. p. 284.

morality among its citizens? That there was no correlation between moral precepts taught and those practiced in eighteenth century Massachusetts was very evident. Adams describes a "peculiar standard" which arose among the people of New England in this period "according to which fornication if followed by marriage, no matter how long dealed, was considered a very venial sin, if sin at all."⁶⁵

And the question of the morality versus the immorality involved in this custom was the subject of a Harvard debate in 1722! One of the ministers who preached against the custom was forced from his job.⁶⁶ It is in the church records that one learns the extent of this custom. Churches were lenient with parties involved who made public confession of their actions.

An examination into the legal records of the Massachusetts Bay Province for the years 1692 - 1714 reveals first of all a series of acts passed in 1692 dealing with the "murthering of bastard children", fornication and incest.

Acts passed in 1692⁶⁷ and in 1696⁶⁸ to prevent the doing away with babies born out of wed-lock ruled that:

"Whereas, many lewd women that have been delivered of bastard children, to avoid their shame and to escape punishment, do secretly bury or conceal the death of their children, and after, if the child be found dead, the said women do alledge that the said child was born dead, whereas it falleth out sometimes (though hardly it is to be proved), that the said child or children were murthered by the said women their lewd mothers, or by their assent or procurement, - be it therefore enacted...that...the mother so offending shall suffer death as in case of murder; except such mother can make proof by one witness at the least that the child whose death was by her so intended to be concealed was born dead."

65. Adams, J.T., op. cit., p. 159.

66. Adams, J.T., op. cit. p. 159.

67. The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, Wright and Potter Printing Co., 1869, vol. 1, p. 55.

68. The Acts and Resolves, op. cit. vol. 1, p. 255.

69

On June 8, 1692 it was ruled:

"That if any man commit fornication with any single woman, upon due conviction thereof they shall be fined unto their majesties not exceeding the sum of 5 pounds, or be corporally punished by whipping, not exceeding 10 stripes apiece, at the discretion of the sessions of the peace who shall have cognizance of the offense."

The act dealing with incest was passed October 12, 1692 and was based

70

directly on the Book of Leviticus.

"If any persons commit incest in any of the particular instances made capital by the law of God, they shall be put to death."

Next we come across An Act Against Adultery and Polygamy passed May 13,

71

1694.

"Whereas the violation of the marriage covenant is highly provoking to God and destructive to families, - Be it therefore enacted by the Governour, Council and Representatives in General Court assembled, and by the authority of the same, [Sect. 1.] That if any man be found in bed with another man's wife, the man and woman so offending, being thereof convicted, shall be severely whip'd, not exceeding thirty stripes, unless it appear upon tryal that one party was surprized and did not consent, which shall abate the punishment as to such party.

[Sect. 2] And if any man commit adultery, the man and woman that shall be convicted of such crime before their majesties' justices of assize and general goal delivery, shall be set upon the gallows by the space of an hour, with a rope about their neck, and the other end cast over the gallows; and in the way from thence to the common goal shall be severely whip'd, not exceeding forty stripes each. Also every person and persons so offending shall for ever after wear a capital A, of two inches long and proportionable bigness, cut out in cloth of a contrary color to their cloaths, and sewed upon their upper garments, on the outside of their arm, or on their back, in open view. And if any person or persons, having been convicted and sentenced for such offence, shall at any time be found without their letter so worn, during their abode in this province, they shall, by warrant from a justice of peace, be forthwith apprehended and ordered to be publickly whip'd, not exceeding fifteen stripes, and so from time to time, toties quoties.

[Sect. 3] That if any person and persons within this their majesties' province, being married, or which hereafter shall marry, do, at any time after the first of July in this present year, one thousand six hundred ninety-four, presume to marry any person or persons, the former husband or wife being alive, or shall continue to live so married, that then every such

69. The Acts and Resolves, op. cit. vol. 1, p. 52.

70. The Acts and Resolves, op. cit. vol. 1, p. 56.

71. The Acts and Resolves, op. cit. vol. 1, pp. 171-172.

[illegible]

offense shall be felony. And the person and persons so offending shall suffer death, as in cases of felony. And the party or parties so offending shall receive such and the like proceeding, tryal and execution, in such county where such person or persons shall be apprehended, as if the offense had been committed in such county where such person or persons shall be taken or apprehended.

[Sect. 4.] Provided, always, that this act or anything therein contained shall not extend to any person or persons whose husband or wife shall be continually remaining beyond the seas by the space of 7 years together, or whose husband or wife shall absent him- or herself the one from the other, by the space of 7 years together, in any part within their majesties' dominions, or elsewhere, the one of them not knowing the other to be living within that time.

[Sect. 5] Provided also, that this act or anything therein contained shall not extend to any person or persons that are or shall be at the time of such marriage divorced, by any sentence had, or hereafter to be had, as the law of the province in that case has provided; or to any person or persons where the former marriage has been, or hereafter shall be, by such sentence had, declared to be void and of no effect; nor to any person or persons, for or by reason of any former marriage had or made, or hereafter to be had or made within the age of consent; that is to say, the man fourteen years of age, the woman twelve."

72

Section four of an act passed on May 29th, 1695 had for its purpose the better prevention of clandestine marriages, a practice which continued to crop up despite the regulations against it. It stated that justices and ministers only were to marry persons, and then only in their own county or town. Names and intention of marriage were to be entered with the town clerk fifteen days before.

The desirability of putting to work the poor and less fortunate members of society was early recognized by the colonial law-makers who had already instituted "houses of correction" in which to keep the "undesirables" at work and punished. Now, in 1699 an act was passed for "The Suppressing and Punishing of Rogues, Vagabonds, Common Beggars, and Other Lewd, Idle and Disorderly Persons; and also for Setting the Poor to Work." Each county

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72. The Acts and Resolves, op. cit. vol. 1, p. 210.

73. The Acts and Resolves, op. cit. vol. 1, p. 378.

which has not yet built a house of correction is ordered to do so. Until this new building is provided, the common jail is to serve. Once committed, the master of the institution has the authority to put them "to work and labour (if they be able) for such time as they shall continue and remain in said house; and to punish them by putting fetters or shackles upon them, and by moderate whipping not exceeding ten stripes at once, which (unless the warrant of commitment shall otherwise direct) shall be inflicted at their first coming in, and from time to time, in case they be stubborn, disorderly or idle and do not perform their task...." Among the individuals eligible to internement under these conditions were "common night walkers...[and] wanton and lascivious persons, either in speech or behaviour."

74

Along this same vein of thought an act passed in 1703 to extend for a three-year period "for the better preventing of idleness, and loose and disorderly living" authorized the selectmen, overseers of the poor and justices of the peace

"...to set to work all such persons, married or unmarried, able of body, having no means to maintain them, that live idly and use or exercise no ordinary and daily lawful trade or business to get their living by. And no single person of either sex under the age of 21 years, shall be suffered to live at their own hand, but under some orderly family government; nor shall any woman of ill fame, married or unmarried, be suffered to receive or entertain lodgers in her house.unless such person or persons so complained of shall give reasonable caution or assurance to the satisfaction of the justice or court, that they will reform:provided, this act shall not be construed to extend to hinder any single woman of good repute from the exercise of any lawful trade or employment, for a livelihood, whereto she shall have the allowance and approbation of the selectmen or overseers of the poor, or the greater part of them, any law, usage or custom to the contrary notwithstanding..."

75

A similar act was passed again in 1710 to extend to 1717. Section 4 of this act empowered any two justices committing such persons to discharge them again "as they shall find cause", whereas under the law of 1703 such

74. The Acts and Resolves, op. cit. vol. 1, p. 538.

75. The Acts and Resolves, op. cit. vol. 1, pp. 654-655.

individuals were discharged by order of the court of general sessions of the peace.

Fornication, we have seen, was punishable in 1692 by a 5 pound fine or a whipping not exceeding 10 stripes. This same act, however, when it involved a Negro or mulatto man and an English woman, meant permanent slavery out of the Province for the man, and enforced servitude in the Province for the woman should she be unable to provide for the care of the child, if one were born. Both parties were also severely whipped. A law to this effect was passed in 1705 "for the better preventing of a spurious and mixt issue."⁷⁶ Section two of the same law presents a still more revealing commentary on the racial inequalities in force at this time. For if any English man commits fornication with a Negro or mulatto woman, his penalty consists of a whipping, a 5 pound fine, and support of the child if any should result. As for the Negro or mulatto woman involved, she "shall be sold, and be sent out of the province."⁷⁷

At the same court session, a ruling was handed down prohibiting marriage between the English (or any other "Christian" people) and Negroes and mulattoes.⁷⁷

The years 1720, 1730 and 1731 saw the passage of acts entitled "an act for the explanation of, and supplement to, an act referring to the poor" which extended the provisions of the already mentioned law of 1710.⁷⁸

In 1722 the court passed "An act to enable the Overseers of the Poor and Selectmen to take care of idle and disorderly persons" to extend for a period of five years.⁷⁹ In the text of this act we find a description of what was

76. The Acts and Resolves, op. cit. vol. 1, p. 578.

77. The Acts and Resolves, op. cit. vol. 1, p. 578.

78. See above, p. 48. Also, The Acts and Resolves, op. cit., vol. 2 (1874), pp. 182-183, 579-580.

79. The Acts and Resolves, op. cit., vol. 2, p. 242.

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meant by "idle and disorderly" persons, a meaning quite different from that implied in the term today.

"Whereas some idle, dissolute, and vagrant persons, having some estate, and accordingly rateable, take no care of their families, nor improve their estates to the best advantage, which persons are not under the care or inspection of the overseers of the poor or selectmen of the towns where such idle persons dwell, - be it therefore enacted... [Sect. 1] That where any idle, dissolute [or] [and] vagrant persons, having a rateable estate, [that] do neglect the [due] improvement or due care of themselves, their families or estates, that in all such cases the overseers of the poor, or the selectmen of the town, shall be, and are hereby empowered to take the like care and inspection of such person or persons that neglect the due care and improvement of their estate, and that mispend their time and money, and [that] live idle, vagrant and dissolute lives, as if they were poor, indigent and impotent persons, and accordingly put out into orderly families their children, if any they have, and improve their estates to the best advantage, and apply the produce and income thereof towards the support of them and their families; any law, usage or custom to the contrary notwithstanding; provided, that any of the said idle persons thinking themselves aggrieved, may make their application to and have remedy from the justices in general sessions of the peace in the same county, if they see cause, who are hereby empowered to relieve such aggrieved persons from the determination of the selectmen."

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This act was continued in 1736 and in 1746 for ten year periods,

In 1756, this act having "been found useful and beneficial", it was again
82
given a further five year extension.

The same year saw the passage of "an act in addition to the several acts and laws of this province now in force respecting poor and idle, disorderly and vagrant persons" which would indicate that the amount of space available in the "houses of correction" was insufficient to accomodate all
83
the unfortunates eligible to them.

"And whereas it is apprehended that many adult persons, both male and female, who by virtue of the laws of this government are liable and lawfully may be sent and committed to the house of correction for the county, or workhouse for the town, in which such persons may respectively reside or be found, may be employed and kept to work with less inconvenience to the town or district from whence by law they may be sent, and with more advantage to

80. The Acts and Resolves, op. cit. vol. 2, p. 795.

81. The Acts and Resolves, op. cit. vl. 3 (1878), p. 326.

82. The Acts and Resolves, op. cit. vol.3, p. 1027.

83. The Acts and Resolves, op. cit. vol.3, pp. 926-927.

them who by law are to take the effects and receive the benefits of their labours, by their being employed and kept to work by a master who should have power to direct, govern and employ them in and about such labour and business as they can best perform, be it enacted [Sect. 3] [Persons liable to a house of correction may be bound to service] ...for a term not exceeding one year. [Such persons may apply to the court of general sessions to annul the contract. Upon court order the contracts may be dissolved. Earnings of persons bound out shall go to support of their families.] "

In 1758 an act was passed which would guarantee to the town officials any expenditures they might make in caring for an unmarried woman giving birth to a child, and in the care of the child after birth. For expenses involved, they were entitled to bind her out to service for up to five years. 84

"Whereas it sometimes happens that considerable charges arise to some towns in the province by means of their being obliged to take care of lewd women at their lying-in with bastard children, and for nursing and taking care of such bastard children, - be it therefore enacted [Sect. 1.] That it shall and may be lawful for the selectmen or overseers of the poor of any town within this province, with the assent of two justices of the peace, to bind out to service for a term not exceeding 5 years, any unmarried woman who shall hereafter be delivered of a bastard child, and who during her lying-in shall have been supported, with her child, at the charge of such town, or whose bastard child shall become a town charge before it arrive at the age of 5 years, and who shall be unable or shall refuse to reimburse or procure the reimbursement of such charge or expense."

For the first time since 1694 a change was made in the penalties for 85 adultery and polygamy in the year 1763. This law set a new penalty for all those guilty of committing adultery under Section 1 of the law of 1694. This penalty called for a fine not exceeding 100 pounds, "and in default thereof to be imprisoned not exceeding 6 months, or be whipped not exceeding 30 stripes." This is the first time a fine is introduced for adultery, and in this practice, the law ~~initially~~ discriminates in favor of the more wealthy individuals of the province. The poor people involved suffer imprisonment and whippings; those of means are merely parted from a portion of

84. The Acts and Resolves, op. cit. vol. 4 (1881), pp. 178-179.

85. The Acts and Resolves, op. cit. vol. 4, p. 622.

their wealth. Might not this digression from the preceding type of punishment indicate in the minds of the law-makers a lessening of the weightiness of the offense of adultery? That is to say, if it is recognized that an individual can absolve himself of such a crime by a monetary disbursement, perhaps it might be concluded that the act in itself is no longer considered such a great crime.

The most telling link in this period of colonial history between the social and economic developments and the laws dealing with individuals whose sex activities do not conform to the decreed pattern may be found in the treatment of fornication and adultery.

Fornication is punishable in this period (1692) by the payment of a fine not exceeding five pounds or by a whipping not exceeding ten stripes. This differed from the very first ruling (1632) which called solely for corporal punishment, and from the second ruling (1642) which called for either marriage, or a fine, or a whipping, or all three. Thus, it becomes no longer compulsory to marry someone with whom one has been sexually intimate, nor on the other hand to suffer physical pain for ones actions. It is now only necessary to pay a fine, if one has the money, and then he has righted himself with authority and government. But if the individual is poor, he must endure the whipping.

And similarly with adultery, an act originally punishable by death, and later by banishment, whippings, and public debasement of all varieties is now (1763) made punishable by a fine not exceeding 100 pounds, or imprisonment not exceeding six months, or a whipping not exceeding thirty stripes.

It is interesting, and significant, that the new law dealing with adultery was promulgated in 1763, that arbitrary point which marks the drawing to

86. Persons convicted under Section 2 of the 1694 law, however, are still subject to the penalties therein called for. The above penalty applies only to those convicted under Section 1 of the 1694 law.

[Faint, illegible handwritten text]

a close of a distinct period in colonial history. That period in the history of Massachusetts was characterized basically by increasing commercialization, the accumulation of wealth in the hands of a small mercantile group, and a small land-holding group, and more marked economic class distinctions than previously. What is the significance of this coincidence? Is it purely accidental? The interpretation of this combination of circumstances that occurs to the writer is that the changing economic base impelled a change in the legal code. Gone were the critical pioneer days in which the entire economy of the colony was dependent on the family. Although the family group is still indispensable to the Province (since it is the seat of the bulk of the manufacturing), there is a growing group whose economic existence is not dependent on the patriarchal family. This group, no longer under the pioneer necessity of an intact family, and exercising the dominant position in the local government, secures corresponding legislative changes. One hundred pound fines have no place in a "hand-to-mouth" early colonial existence, but they do have a very definite place in an expanding commercial economy.

We are presented, then, with a change in the law dealing with adultery which lessens the severity of the original punishment (for those who can afford to take advantage of it) and introduces for the first time the fine. Under the new law, it now becomes possible for individuals possessing wealth to take advantage of the opportunity to pay a fine. Less fortunate individuals, who default payment of the fine, might be subject to either imprisonment or whipping. For them, the change in the code represents no lightening of severity. Under the law of 1694, had they been convicted under Section 1, the punishment would have been not more than 30 stripes. Obviously it matters little to the person

involved whether the 30 stripes are administered under a new or an old statute!
 87
 Unless it can be argued that 6 months in prison under shocking conditions (when imprisonment is inflicted instead of the whipping) is a less severe punishment than the whipping, it is difficult to find a lessening of severity in the new law for those unable to pay the fine. Persons convicted under Section 2 of the 1694 law were still subject to the public opprobrium inherent in that law, and the whipping.

88

We have mentioned above the large part played by the slave traffic in the commerce of Massachusetts, and the light in which negroes were regarded (i.e. as commodities). Seen against this background we can better understand the raison d'etre of the laws inflicting the penalty of servitude on negroes or mulattoes found guilty of fornication. A commodity on the market, the members of this racial group become a commodity to be sold when they violate a law which inflicts only a minor punishment on the members of the caucasian race. Here we see distinctly the warp and woof of economic base and legal superstructure.

87. See Cantor, Nathaniel, "Measures of Social Defence", Cornell Law Quarterly, vol. 22, no. 1, Dec., 1936, p. 18; and McMaster, J.B., A History of the People of the United States, vol. 1, pp. 98-102.

88. See above, pp. 36-37.

The period from 1763 to 1808 witnessed the political revolution of the colonies, and the very beginnings of an even more over-whelming economic revolution. "Let it be remembered", Weeden tells us, "that...an economic principle crushed the crown in America and founded a new empire...Merchants agreed not to import; rich as well as poor dressed in homespun, ate no lamb to save the wool, while orders for British goods were cancelled, and ruin¹ faced British manufacturers as well as factors."

Thus did the colonists answer the attempts of the British crown to suppress their industrial life in order that British manufacturing interests might prosper from the colonial markets. The restrictions imposed by Great Britain had not succeeded in preventing the colonists from weaving their own cloth, manufacturing hats from furs, or manufacturing their own iron. The colonists had proceeded to carry on whatever economic activities they found profitable (largely still on a domestic level) despite the royal² edicts forbidding them.

When Benjamin Franklin told the British government, "I do not know a single article imported into the Northern colonies but what they can either do without or make themselves. The people will spin and work for³ themselves in their own houses," he was describing the New England economic structure of domestic industry in which "nearly every household carded and spun, employing its own inmates, including children."⁴

1. Weeden, W.B., op. cit. vol. 2, pp. 718-719.

2. Weeden, W.B., op. cit. vol. 2, p. 723.

3. Weeden, op. cit. vol. 2, p. 723.

4. Weeden, op. cit. vol. 2, p. 731.

Massachusetts had been agitating for some time against the importation of British goods, and this movement of protest came to a head in 1768 when it became known that troops were being sent over to enforce obedience to the royal orders. "In August, 1768, the merchants of Boston signed an agreement not to import merchandize from Great Britain, excepting some few necessities, during the year 1769."⁵ Public opinion functioned vigorously against violators of this agreement. The year 1769 saw a fifty per cent drop in imports for New England over the year 1768.⁶

The Port Bill of 1774 which would punish Boston by closing her harbor was followed by the union of the thirteen colonies to resist any such action. A "universal suspension of exports and imports" was the answer of the colonies to Parliament and the King.⁷ "A growing people, accumulating wealth through evasions of Navigation and Sugar Acts, through neglect of excise laws, found an easy way to open resistance of the Stamp and Tea Acts. In resisting constituted authority that oppressed their daily living they learned to establish a constitution of their own."⁸

We must keep in mind, however, that whereas these developments were bringing about a steady increase in New England manufacturing, these increases "did not keep pace with the increasing capital of the country gained from other sources [i.e. commerce]."⁹

Following the aggravation produced from the Stamp Acts, a growing sentiment for goods of American make swept the New England colonies. It

5. Weeden, W.B., op. cit. vol. 2, p. 724.

6. Weeden, W.B., op. cit. vol. 2, p. 725.

7. Weeden, W.B., op. cit. vol. 2, p. 727.

8. Weeden, W.B., op. cit. vol. 2, p. 729.

9. Weeden, W.B., op. cit. vol. 2, p. 731.

was a matter of much pride when the Harvard Class of 1768 was graduated¹⁰
 dressed entirely in American manufactured goods. Spinning by families
 and patriotic groups was a regular pastime. Boston, in 1768, revived the old
 linen industry and Brookfield started a woolen factory. "Premiums were¹¹
 offered to encourage the growth of raw materials and their manufacture."

In other fields of production, mills producing potash, steel, metals,
 powder, iron, paper, snuff, chocolate, pottery and shoes began to appear in¹²
 increasing numbers.

Changes in agriculture were few in number. A Bounty was offered in¹³
 Massachusetts to increase wheat production in 1763.

Surprising as it may seem, despite the embargo on importations to the¹⁴
 colonies, Massachusetts prospered in the years just before the Revolution.

As for the social customs of this period, they changed very little.
 "Among the lower classes the standard of both manners and morals was not
 advancing." Bundling was still a common practice. "Possibly it was not as
 immoral as this age would think, but from any point of view it reveals a¹⁵
 very coarse taste." Marriages were early, manners "coarse but innocent",¹⁶
 social entertainment rare and subdued. That the population was still imbued
 with much of the Puritan ideology can be learned from an incident described¹⁷
 by Charles F. Adams which took place in Randolph in the year 1777. Dr.
 Moses Baker, and a certain woman resident of that town were threatened
 with tarring and feathering by a "vigilante" citizen group who were under

10. Weeden, W.B., op. cit. vol. 2, p. 733.

11. Weeden, W.B., op. cit. vol. 2, pp. 732-733.

12. Weeden, W.B., op. cit. vol. 2, pp. 734-735.

13. Weeden, W.B., op. cit. vol. 2, p. 735.

14. Weeden, W.B., op. cit. vol. 2, p. 736.

15. Weeden, W.B., op. cit. vol. 2, p. 739.

16. Weeden, W.B., op. cit. vol. 2, pp. 739-741.

17. Adams, C.F., op. cit., pp. 511-513.

The first part of the report deals with the general situation of the country. It is a very interesting and informative study of the country's history and its present state. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country.

The second part of the report deals with the economic situation of the country. It is a very interesting and informative study of the country's economy and its present state. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country.

The third part of the report deals with the social situation of the country. It is a very interesting and informative study of the country's society and its present state. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country.

The fourth part of the report deals with the political situation of the country. It is a very interesting and informative study of the country's politics and its present state. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country.

The fifth part of the report deals with the cultural situation of the country. It is a very interesting and informative study of the country's culture and its present state. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country.

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the impression that these two individuals were having improper relations. They took it upon themselves, supported by public opinion, to enforce the idea of decent morals, and only Dr. Baker's threat to fire, deterred them from carrying out their plan.

The women of New England were reliable comrades during the revolutionary struggle of the colonies, and many of them were left widowed with large families to carry on alone after the battle was won. Weeden cites the case of Isaac Davis, captain of the minute-men of Acton, aged 30, father of 4 children, and the first victim in the Concord fight. "...he had parted from his wife three hours before his death with the words, 'Take good care of
18
the children!'"

During the French and Indian Wars, Massachusetts commerce had been given considerable impetus as a result of the expanding trade with the French West Indies. After, and as a result of the same war, Massachusetts entered the whaling business on a large scale, reaching its high point in
19
1774-1775. During the American Revolutionary war the export of only inferior fish to the West Indies was allowed. The scarcity of salt, and the increase in sugar duties in 1764 worked hardships on the vital codfish
20
business of Massachusetts.

An additional irritation imposed by England on the eve of the revolution involved restrictions on the growing coastal trade of the colonies.

Meanwhile, the Massachusetts slave-traders were engaging in a brisk business, bringing the bulk of their human African cargoes to the West

18. Weeden, W.B., op. cit., vol. 2, p. 744.

19. Weeden, W.B., op. cit. vol. 2, pp. 745-749.

20. Weeden, W.B., op. cit. vol. 2, pp. 749-750.

The first part of the paper is devoted to a discussion of the
 general principles of the theory of the structure of the
 crystal lattice. It is shown that the structure of the
 crystal lattice is determined by the forces of interaction
 between the atoms of the crystal. The forces of interaction
 are of two kinds: the forces of attraction and the forces
 of repulsion. The forces of attraction are due to the
 electrostatic forces between the atoms, while the forces
 of repulsion are due to the forces of contact between the
 atoms. The forces of attraction are of long range, while
 the forces of repulsion are of short range. The forces
 of attraction are of the order of 10^{-8} ergs, while the
 forces of repulsion are of the order of 10^{-10} ergs. The
 forces of attraction are of the order of 10^{-8} ergs, while
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The second part of the paper is devoted to a discussion of
 the theory of the structure of the crystal lattice. It is
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 forces of repulsion are of the order of 10^{-10} ergs.

21
Indies. And shipbuilding in that state was a flourishing industry.

The Revolution brought a set-back to the commerce of the colonies. Needen tells us that it "...was soon shattered and nearly destroyed in the punishment administered by the mother country to her rebellious child." And that "...America lost wealth on the high seas, until [she] replaced her
22 shattered vessels by larger ones with better cargoes."

But this same commercial set-back brought advances in the field of manufacturing where a beginning of diversification in industry took place. It placed the colonies in a position where they were able to maintain a
23 very favorable neutrality later during the European wars.

For ten years after the American Revolution, the colonies passed through an economic crisis and hard times, following on the heels of war-time commercial speculation. Large imports had been made by the merchants in anticipation of peace-time prosperity with its increase in markets for exports. But the latter simply did not exist nor develop. Two possible remedies for the situation consisted in the opening of new foreign markets, and the encouragement of home production. The first remedy was put into effect with the opening of new trade routes to the west coast of America, to China, to the East Indies, and to France. Massachusetts merchants were pioneers in developing the new routes and in benefiting from their bountiful profits. And the second remedy functioned as well, with the initiation and flourishing of large numbers of small manufacturing enter-

21. Needen, W.B., op. cit. vol. 2, p. 763.

22. Needen, W.B., op. cit. vol. 2, pp. 767-768.

23. Callender, Guy Stevens, Selections from the Economic History of the United States, 1765-1860, Ginn and Co., 1909, p. 125.

prizes. As a result of these new activities, a normal prosperity was re-
²⁴
 stored to the colonies by 1789.

In Weeden's words, "...the people, during the Revolution, had paused
 for the moment in their natural commercial development, and had become an
²⁵
 industrial community almost self-sustaining." The first year of the Revolution gave Massachusetts a business set-back, but within a year's time she was back on her feet again.

The period of the Revolution witnessed a considerable development in the business of insurance or "underwriting", and also in the development of joint enterprises. "A person having either vessel, lumber, or fish would advertise for partners who could furnish the elements lacking for a foreign
²⁶
 shipment."

After 1775 the selling of masts to England became illegal. Instead these trees now "served in equipping the stout [American] cruisers of 1812, in which the children of Revolutionary sires fairly beat the great navy that
²⁷
 had once absorbed all the imperial trees of the subject colonies."

In the realm of manufacturing, the colonies branched out still further in the fields of munitions, clothing, gunpowder, sulphur, and powder. The production of cloth became a universal domestic business engaged in by women of all classes. The Whitney gin had revolutionized the cotton supply, and the manufacture of wool-cards (which was subsidized by Massachusetts in 1777) increased the domestic homespun output. Iron, steel, guns, scythes, axes, pins, needles, nails, paper, snuff, chocolate and salt were now all being
²⁸
 turned out by Massachusetts mills. "As the seaports suffered in foreign

24. Callender, G.S., op. cit., p. 181.

25. Weeden, W.B., op. cit. vol. 2, p. 779.

26. Weeden, W.B., op. cit. vol. 2, p. 782.

27. Weeden, W.B., op. cit. vol. 2, pp. 784-785.

28. Weeden, W.B., op. cit. vol. 2, pp. 788-795.

commerce, so the inland towns increased by these rough-and-ready industries, instituted by the changes and necessities of war, and often stimulated by bounties."²⁹

Unsound monetary arrangements during and following the Revolution hampered business expansion, however. The fluctuating paper currency³⁰ "was a continual and varying perplexity to merchants."

Throughout this period the family remained the basic social and economic unit for the vast majority in Massachusetts. "...each home contained within itself 'almost all the original and most necessary arts.'"³¹ Weeden tells us that the sabbath was still under puritanical observance by many of the colonists.³²

Massachusetts set herself up as a "free commonwealth" following the Revolution, and gave equality to Negro citizens in 1783.

The years from 1783 to 1789 witnessed the "poorest commerce known in the whole history of the country." The United States suffered from an unfavorable balance of trade, and Congress was unable to legislate tariffs effectively as each state was free to regulate its own. As the states gave over their power to the Union, they gained a more favorable commercial position. And when Europe soon became the scene of many revolutions, the new Union came back once more in the commercial field. "Then New England took her old place in the commercial marine. Her fishermen, sailors, and mer-

29. Weeden, W.B. op. cit., vol. 2, pp. 793-794.

30. Weeden, W.B., op. cit., vol. 2, pp. 797-799.

31. Weeden, W.B., op. cit., vol. 2, p. 805.

32. Weeden, W.B., op. cit. vol. 2, p. 806.

The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$. It is shown that the system (1) has solutions for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ if and only if the conditions (2) are satisfied. The conditions (2) are necessary and sufficient for the existence of solutions of the system (1) for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$.

In the second part of the paper, the problem of the uniqueness of solutions of the system (1) for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ is considered. It is shown that the system (1) has a unique solution for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ if and only if the conditions (3) are satisfied. The conditions (3) are necessary and sufficient for the uniqueness of solutions of the system (1) for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$.

In the third part of the paper, the problem of the stability of solutions of the system (1) for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ is considered. It is shown that the system (1) has stable solutions for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$ if and only if the conditions (4) are satisfied. The conditions (4) are necessary and sufficient for the stability of solutions of the system (1) for arbitrary values of the parameters $\alpha, \beta, \gamma, \delta, \epsilon, \zeta, \eta, \theta, \iota, \kappa, \lambda, \mu, \nu, \xi, \omicron, \pi, \rho, \sigma, \tau, \upsilon, \phi, \chi, \psi, \omega, \varphi$.

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33

chants carried the starry flag throughout the seas of the world."

In 1786 the economic dissatisfaction of the poor people of Massachusetts oppressed by taxation and hard times, found expression in open rebellion,
 34
 but they were suppressed in an arbitrary manner.

About 1783 Massachusetts reflected the tendency in England for labor to be taken from the farm and placed in textile factories. In 1785 there was formed in Boston an association of tradesmen and manufacturers. The English inventions for textile production were spreading to the new world, where they were soon supplemented by American creative genius, and Congress
 35
 protected the infant industries by heavy import duties in 1785.

Meanwhile, "the old household industries made a final effort to renew
 36
 their hold on the growing life of the new time." Textile manufacturing had grown to be an important family industry under the impetus of the Revolutionary era. Weeden would even assign the home industry production as a chief cause in the economic dislocation faced by the importing merchants after
 37
 the Revolution. The years 1787-1789 saw a revival and further encouragement of domestic industries.

And with the firm establishment of the new republic, commerce and manufacturing gained new headway, the latter to the extent of importing skilled
 38
 laborers from England.

Under the series of laws passed by the new American Congress in 1790, 1792

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33. Weeden, W.B., op. cit. vol. 2, p. 839.
 34. Weeden, W.B., op. cit. vol. 2, pp. 843-844.
 35. Weeden, W.B., op. cit. vol. 2, pp. 847-848.
 36. Weeden, W.B., op. cit. vol. 2, p. 854.
 37. Weeden, W.B., op. cit. vol. 2, p. 855.
 38. Weeden, W.B., op. cit. vol. 2, p. 857.

and 1817, in which foreign vessels were discriminated against in American trade, commercial interests in America leaped forward. "The number of vessels flying the American flag increased rapidly. The shipyards were busy building craft for ocean trade...the tonnage of the foreign trade rose from 123,893 in 1789 to 981,019 in 1810, and the proportion of foreign trade carried in American vessels increased from 24 to 92 per cent during the same period. By 1860 the total tonnage of United States vessels had reached
39
2,807,000."

The development of the steamship, the opening of canals and the laying of railroads all combined to make the period in United States history from
40
1790 to 1860 one of "remarkable commercial development."

Meanwhile, manufacturers, anxious for protection against keen English competitors (who were "dumping" their accumulated woolens, cotton cloths and iron goods in America) secured from Congress a tariff on "all imported industrial products, from steel and iron to fish and salt," which tariff
41
netted the government \$4,000,000 in 1791.

Under this protection, industry began to expand with extraordinary speed and with such good profits as to attract capital from commercial pursuits to it. In 1815 there were 62 times as many spindles humming in the cotton mills as in 1807 and 19 times as many workers employed at them as in 1811. In 1860 there were over ten times as many spindles in the cotton

39. Bimba, A., op. cit. p. 61.

40. Bimba, A., op. cit. p. 62, quoting Lippincott, Economic Development of the United States, p. 263.

41. Bimba, A., op. cit. p. 62.

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42

mills as in 1815. Similarly, the woolen industry, and steel and iron production expanded by leaps and bounds. Although the above figures are for the country as a whole, they may be taken as representative of Massachusetts' industrial development, since that state was one of the leaders in the race.

Among the concomitants of this mushroom growth of industry were an increase in the number of workers employed in the factories (from 349,000 in 1820 to 1,311,000 in 1860⁴³), an increase in the population of the country, and the growth of large urban areas.

44

The tendency already cited for land to become acquired by a small group of speculators now increased with a rapidity corresponding to that in the commercial and industrial branches of activity. "The land laws were enacted to discriminate against the poor settlers; they made it possible for the capitalist companies as well as individual capitalists to secure vast tracts for trivial sums and later force the actual settlers to pay exorbitant prices for small plots. Absentee landlordism became an important factor. Speculation in land soon became the main occupation of a great portion of the master class."⁴⁵

42. Bimba, A., op. cit., p. 62.

43. Bimba, A., op. cit., p. 63.

44. See above, p. 30.

45. Bimba, A., op. cit., p. 64.

[illegible]

This enormous expansion in every phase of economic life was accompanied by economic crises in 1819 and 1837-1842. "Hundreds of enterprizes were prostrated, factories closed, thousands of workers thrown out of employment, the streets of the industrial cities became crowded with destitute men and women."⁴⁵

46

We have described earlier in this paper the colonial home as a unit of production, and the strong unity of the family which resulted from fulfilling this function along with others. In the period now under discussion one important item in family production was being taken from it and transported into factories and mills, - the process of spinning and weaving. And many of the women and children who had formerly engaged in these occupations in their homes, now left their homes and entered the factories in the attempt to support themselves and their families. "The textile industry was in the beginning and to a very great extent still remains the stronghold of our women workers. In 1814 there were 30,000 working women in this industry, while in 1848 their number increased to 78,000."⁴⁸

Other industries, too, drew women and children from their homes to work for long hours and small wages. Mary Beard states that in 1837 women could be found in about one hundred occupations outside the home. In the shoe industry of Massachusetts alone, 15,000 women were employed at unbelievably low wages.⁴⁹ A few years earlier (1832) it had been estimated by the New England Association of Farmers, Mechanics and Other Working Men that two-thirds of all factory workers were children under sixteen years.⁵⁰ Mrs. Beard also cites an estimate regarding the earning power of women in

46. Bimba, A., op. cit., p. 65.

47. See above, pp. 1, 9-12.

48. Bimba, A., op. cit., p. 67.

49. Bimba, A., op. cit., p. 68, quoting Beard, Mary, A Short History of the American Labor Movement, pp. 47-48.

50. Bimba, A., op. cit., p. 67, quoting Commons, J.R., op. cit., pp. 173-174.

The first of these is the fact that the
 government has been unable to
 maintain a stable currency. This has
 led to a loss of confidence in the
 government and a consequent
 decline in the value of the
 currency. The second is the fact
 that the government has been
 unable to maintain a stable
 economy. This has led to a
 decline in the value of the
 currency and a consequent
 loss of confidence in the
 government. The third is the fact
 that the government has been
 unable to maintain a stable
 political system. This has led to
 a decline in the value of the
 currency and a consequent
 loss of confidence in the
 government.

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New England that is revealing of the low incomes for which they worked. Women without children engaged in the needle trades could earn a maximum of \$58.50 annually, and women with children, not more than \$36.40⁵¹ a year.

In 1855 Lucy Stone wrote, "Some one in Philadelphia has stated that women make fine shirts for twelve and a half cents a piece; that no woman can make more than nine a week, and the sum thus earned, after deducting rent, fuel, etc. leaves her just three and a half cents a day⁵² for bread. Is it a wonder that women are driven to prostitution?"

Although this particular quotation is descriptive of Philadelphia, it would probably be equally applicable to the New England section and Massachusetts.

According to Calhoun, in 1830 women's wages were lower than starvation⁵³ wages. Binding shoes, sewing rags, folding and stitching books, making sheets and trousers at 8 or 10 cents each were common occupations. Shirt-making could be done at home. Nine shirts a week at the most gave 90 cents. Fifty cents a week was the average.⁵⁴ Out of the maximum \$2.50 that a factory girl earned, she must provide her own maintenance, contribute to her family's support, and set aside something for times of unemployment! No wonder Calhoun tells us it was not possible to live honestly and decently on their wages. Because of the poverty, young girls were⁵⁵ driven to lives of shame to an incredible extent.

In the factories, the strain of long hours of labor in addition to the

⁵¹ Bimba, A., op. cit., p. 70, quoting, Beard, H., op. cit., p. 48.

⁵² Calhoun, A.W., op. cit., vol. 2, p. 121.

⁵³ Calhoun, A.W., op. cit., vol. 2, p. 182.

⁵⁴ Calhoun, A.W., op. cit., vol. 2, pp. 182-183.

⁵⁵ Calhoun, A.W., op. cit., vol. 2, p. 186.

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prevälent unsanitary conditions was bad for future mothers. In those cases where the girls employed in the factory lived in the corporation boarding houses, six or eight girls were required to share one room, often sleeping three in one bed.⁵⁶

The fact that the pay of these women was frequently less than four times that which men received for the same work "diminishes the importance of woman in society,...and, increases the temptations to licentiousness."⁵⁷ It is scarcely surprizing that morality should be at a low ebb and female impropriety unfortunately of frequent and very general occurrence. Reverend A. Stevens, writing in 1849, says, "Female vice does exist among us, but it is less common than in any European community: it prevails among our denser population and is chiefly the result there of poverty and mis-⁵⁸ education."

In 1834 at the first convention of the National Trades' Union, the president of this same association described the conditions under which the 4000 women employed in the factories of Lowell had to work: "..... dragging out a life of slavery and wretchedness...degraded females [of] woe-stricken appearance. These establishments are the present abode of wretchedness, disease, and misery...the sons of our farmers, as soon as they are of sufficient age, have been induced to hasten off to the factory, where for a few pence more than they could get at home, they are taught to become the willing servants, the servile instruments of their employers' ⁵⁹ oppression and extortion!"

⁵⁶. Calhoun, A.W., op. cit. vol. 2, p. 183.

⁵⁷. Calhoun, A.W., op. cit. vol. 2, p. 187.

⁵⁸. Calhoun, A.W., op. cit. vol. 2, p. 190.

⁵⁹. Bimba, A., op. cit. p. 84.

Here again we see how the growth of the factory system was tearing apart the institution of the family, limb by limb, until gradually we are hardly able to recognize that once characteristic institution of colonial life. The long hours of factory work, too, entered to disrupt what was left of family life.

Among the various demands of the rising labor organizations of the period under discussion was the abolition of child and woman factory labor. The objections they raised to this practice were two: "...first, because such labor was detrimental to the skilled workers, and second, because the horrible conditions in the factories, the long hours of labor, and the crushing of the health of women and children aroused widespread sympathy among the men wage-earners."⁶⁰

However, the women factory workers were not relying entirely on the sympathy of their brother-workers to bring about a betterment of their conditions, for in 1834 we are presented with the spectacle of 2000 girl-workers of Lowell's textile factories striking in protest to a wage reduction,⁶¹ and forming a union.

It is interesting to note that the industrialists making use of this cheap labor rationalized their exploitation by claiming to benefit the women and children socially and financially! Matthew Carey wrote that girls of 10 to 16 years "too young or too delicate for agriculture" would now be of value in a factory instead of being exposed as heretofore to⁶² "vice and immorality" in a career of idleness. But Calhoun tells us

60. Bimba, A., op. cit., p. 92.

61. Bimba, A., op. cit., p. 99.

62. Calhoun, A.W., op. cit., vol. 2, p. 172.

to the contrary that outrages were committed among the factory women
 whose pay was at a subsistence point. ⁶³ A Massachusetts House Committee
 on Education in 1836 reported, "... Causes are operating to deprive
 young females particularly of means and opportunities of mental and moral
 improvement essential to their becoming good citizens." ⁶⁴

Following the fifteen years of hard times which came on the heels
 of the panic of 1837, there was a period of industrial revival accompanied
 by a rising price level, and increasing organization among labor. Higher
 wages, immigration restriction, and the ten-hour day were among the de-
 mands of these unions. "It would be hard to find a branch of industry
 in which there were no strikes during this period. As the years 1853-
 1854 were years of so-called 'prosperity' many of these strikes were
 successful. The workers succeeded in winning higher wages." ⁶⁵ The severe
 crisis of 1857 threw many workers again onto the streets and worked havoc
 with the organized labor movement. ⁶⁶

Calhoun tells us that there were no adequate educational facilities
 for women during the first half of the nineteenth century, and that the
 object of whatever education did exist was to enable a girl to attract a
 husband, maintain a home and manage her family. ⁶⁷ Although book education
 was better than that in former years, intellectual development was not
 open to women.

Woman's legal and intellectual status during this period was "medieval"
 and permeated with injustice. ⁶⁸ In 1845 the marriage relation was defined
 as "a legal unity, the object of which was to secure unity of family

63. Calhoun, A.W., op. cit., vol. 2, p. 179.

64. Calhoun, A.W., op. cit., vol. 2, p. 180.

65. Bimba, A., op. cit., p. 106.

66. Bimba, A., op. cit., p. 106.

67. Calhoun, A.W., op. cit., vol. 2, p. 86.

68. Calhoun, A.W., op. cit., vol. 2, p. 91.

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69

support and government." "The public opinion of men required of women a stricter observance of certain morals than it demanded of men; but they had not ventured in that age to put the idea into the criminal code."⁷⁰

In addition to the purely economic forces disrupting the family group, there were many closely related sociological factors working toward the same end. Population shifts from country to city concomitant with the processes of industrialization had resulted in a decrease in the number of persons who married at all since, "...city life tends to discourage marriage."⁷¹ Then too, the growing economic independence of women gave them greater freedom of choice in the matter of marriage, many remaining single who, under stress of economic necessity, might otherwise have sought security in marriage. Marriages once contracted often could not stand the strain when a husband became resentful of his wife's successful career, and broke up when the wife insisted on maintaining her work. Although these additional sociological factors were of considerable influence in molding the shape assumed by the family, time will not permit an elaboration upon them in this paper.

From 1765 to 1779, every few years saw the revival of the old laws or the enactment of new enabling the overseers of the poor, and selectmen to take care of idle and disorderly persons, vagrants and the poor.⁷² The law enacted in 1770⁷³ would indicate that the number of persons who might be

69. Calhoun, A. W., op. cit., vol. 2, p. 93.

70. Calhoun, A. W., op. cit., vol. 2, p. 94.

71. Groves, E. R. and Ogburn, W. F., American Marriage and Family Relationships, New York, 1928, p. 299.

72. The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, Wright and Potter Printing Co., 1881, vol. 4, pp. 324, 766, 920; vol. 5 (1886), pp. 46, 87, 460, 1123.

73. The Acts and Resolves, op. cit., vol. 5, p. 46.

incarcerated was reaching beyond the bounds of the Province's house of correction facilities. This law allowed the justices to "otherwise punish them by setting in the stocks, not exceeding 3 hours, or by whipping not exceeding 10 stripes" at his discretion. The preamble to the act explains, also, that often when persons guilty under this statute are being transported back to their own county for imprisonment, they escape without any punishment at all. This law would mete them out a punishment on the very spot.

In the compilation of laws of the free Commonwealth of Massachusetts after the Revolution, under the title of "The General Laws of Massachusetts from the Adoption of the Constitution to Feb. 1822", we trace our way further in this field of legislation.

We find a law passed in 1784 entitled "An Act against Adultery, Polygamy and Lewdness."⁷⁴ The section dealing with adultery places it at the discretion of the justices to inflict one or all of four penalties, - an hour on the gallows with a rope about ones neck, a public whipping of

74. The General Laws of Massachusetts from the Adoption of the Constitution to Feb. 1822, vol. 1, edited by Theron Metcalf, p. 176.

not more than 39 stripes, imprisonment, and fine. After the penalty is paid, the violator is "bound to the good behavior." The aggravation of the offense is to be the determining factor in the justice's choice of punishment.

Polygamy carried a similar discretionary punishment, except that the whipping was not to exceed 30 stripes. Nor did this law apply in cases where the husband or wife had been absent seven years.

Section 3, pertaining to lewdness, reads as follows:

"That if any man and woman, either or both of whom being then married, shall lewdly and lasciviously associate and cohabit together, or if any man or woman married or unmarried shall be guilty of open gross lewdness and lascivious behaviour, and being thereof convicted before the Justices of the Supreme Judicial Court, " shall be punished by sitting in the pillory, or a whipping, or fine, or imprisonment or all four.

75

In 1786 a law was passed for the punishment of fornication. The man, if he was unable or neglected to pay a fine ranging from 30 shillings to 5 pounds, was whipped not exceeding 10 stripes. This made possible the imposition of a smaller fine than the 5 pounds of the 1692 statute, and to this extent represented a lightening of the punishment. The woman was to pay a fine of from 6 shillings to 3 pounds, or spend from 2 to 30 days in prison or the house of correction. The lesser fine for the woman and the substitution of incarceration for the whipping would indicate that she received less blame than the man. This is of considerable interest, especially in light of a later reversal in this principle.

75. The General Laws of Massachusetts, op. cit., vol. 1, pp. 237-238.

Moreover, if the woman voluntarily confessed her sin before a Justice of the Peace and paid him 6 shillings as the fine for the first offense and 12 shillings for each offense thereafter (and filed her receipt with the clerk of court), she freed herself from further prosecution on that count.

The year 1787 saw the enactment of further legislation for dealing with "Rogues, Vagabonds, common Beggars and other idle, disorderly and lewd persons."⁷⁶ Section 2 enumerates among those who are to be committed to the houses of correction: stubborn servants or children, common night-walkers, wanton and lascivious persons in speech, conduct or behaviour.⁷⁷

In 1797 another law was passed dealing with these same categories empowering the overseers of the houses of correction to let out the inmates under contract to nearby employers and in 1802 there was further legislation requiring that the keepers of houses of correction see that materials are furnished by the county to keep the inmates occupied, and that towns, parents or masters cannot send in such material without the keeper's consent.⁷⁸

We see the beginning of the exodus of the pillory, the gallows and the whip as tools of punishment when it was enacted by the Senate and House of Representatives meeting in a General Court in 1813 that:⁷⁹

"...for any crime or misdemeanor...now punishable by whipping, standing in the pillory, sitting on the gallows, or imprisonment in the common gaol of the county,... [the Supreme Judicial Court of the Commonwealth] ... may, at their discretion, in cases not already provided for, in lieu of the

76. The General Laws of Massachusetts, op. cit., vol. 1, p. 322.

77. The General Laws of Massachusetts, op. cit., vol. 1, pp. 557-558.

78. The General Laws of Massachusetts, op. cit., vol. 2, pp. 63-64.

79. The General Laws of Massachusetts, op. cit., vol. 2, p. 329.

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punishments aforesaid, order and sentence such convict or convicts to suffer solitary imprisonment, for a term not exceeding 3 months, and to be confined to hard labour, for a term not exceeding 5 years, according to the aggravation of the offence."

In the same year, a special law was made with regard to the punishment of women in light of the above ruling. This law stated that when a woman was convicted of any crime for which she might be sentenced to solitary punishment and confinement at hard labor, the court could, at its discretion, sentence her to the solitary imprisonment only. Here, again, then, we see a functioning of the law to favor the women and inflict a lighter punishment upon them than upon the men.

When the Revised Statutes of the Commonwealth of Massachusetts were

80. The General Laws of Massachusetts, op. cit., vol. 2, pp. 338-339.

passed in 1835, they embodied penalties for adultery, lewd and lascivious cohabitation and fornication which have remained identical (with one change
81
in the latter offence) to the present day.

82

For adultery that penalty was and is not more than three years in the state prison, or not more than two years in the county jail, or a fine not exceeding \$500.

83

For lewd and lascivious cohabitation the law reads: "If any man and woman, not being married to each other, shall lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, shall be guilty of open or gross lewdness, and lascivious behavior, every such person shall be punished by imprisonment in the state prison, not more than 3 years, or in the county jail, not more than 2 years, or by fine not exceeding \$300."

81. However, by an enactment in 1903 (Supplement to the Revised Laws of the Commonwealth of Massachusetts, 1902-1908, Wright and Potter Printing Co., 1910, pp. 1459-1460) these harsh penalties became translated into still longer terms for women offenders. It was ruled that a woman who is sentenced to the reformatory prison (the construction of which was authorized in 1874, Supplement to the General Statutes of the Commonwealth of Massachusetts, (vol. 2, 1873-1881) edited by William A. Richardson and George P. Sanger, Rand, Avery and Co., 1882, pp. 295-299) for a felony may be held therein for not more than 5 years; or if sentenced for a longer term than 5 years, may be held for such longer term. And further, it was ruled that a woman who is sentenced to said reformatory prison for a misdemeanor may be held therein for not more than 2 years.

In 1907, in an act relating to sentences to the reformatory prison for women, it was stated: "A prisoner who is sentenced to the reformatory prison for women for drunkenness, for simple assault, for being a night-walker, for fornication, for being idle and disorderly, for keeping a disorderly house, for lewdness, for stubbornness, for being a vagrant, or for unlawful taking, ~~and~~ may be held therein for not more than two years. A prisoner who is sentenced to said reformatory prison for any offence not named in this section may be held therein for not more than 5 years, unless sentenced for a longer term, in which case she may be held for such longer term." (Supplement to the Revised Laws of the Commonwealth of Massachusetts, 1902-1908, op. cit., pp. 1460-1461.)

82. The Revised Statutes of the Commonwealth of Massachusetts passed Nov. 4, 1835, edited by Theron Metcalf and Horace Mann, 1836, Dutton and Wentworth, 1836, p. 739.

83. The Revised Statutes, op. cit., p. 739.

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84

In the case of fornication the penalty was not more than 2 months in the county jail or a fine not exceeding \$30. In the General Statutes of 1860 this was changed, however, to call for not more than 3 months in jail or the \$30 fine.

85

In 1783 the free commonwealth of Massachusetts gave equality to her negro citizens. Yet it was not until 60 years later, 1843, that negroes were legally free to marry white persons.

86

Among the Statutes of 1860 was one dealing with "...stubborn children,...common night walkers, lewd, wanton, and lascivious persons in speech or behavior,...and all other idle and disorderly persons," stating that they might be committed for not more than six months to the house of correction or workhouse, or that they may have the alternative of paying a fine not exceeding \$20.

87

It was also ruled in the same year that individuals convicted for the third time as common night walkers may be sentenced to the house of correction or workhouse not exceeding five years.

88

89

In the Revised Statutes of 1835 it was declared that: "When the sentence of confinement at hard labor, for any term of time, is awarded against a female convict of whatever age, [the court] shall order such sentence to be executed, either in the house of correction or in the county jail, and not in the state prison."

84. The Revised Statutes, op. cit., p. 740.

85. The General Statutes of the Commonwealth of Massachusetts, 1860, William White, 1860, p. 818.

87. The General Statutes, 1860, op. cit., p. 820.

86. Supplements to the Revised Statutes. Laws of the Commonwealth of Massachusetts passed subsequently to the Revised Statutes, 1835 to 1849 inclusive, edited by Theron Letcalf and Luther S. Jushing, Dutton and Wentworth, 1849, p. 248.

88. The General Statutes, 1860, op. cit., p. 821.

89. The Revised Statutes of the Commonwealth of Massachusetts, 1835, op. cit., p. 782.

Dr. Goebel tells us that the pronouncements of the United States courts after the Revolution were colored by three elements, a changed psychology, a changed political philosophy, and an aversion to the past.

He places special emphasis on the changed political philosophy in which sovereignty was considered as resting in the people rather than the King. "The substitution of new theories consonant with the underlying political philosophy of the state made historical considerations undesirable or even impossible." ⁹⁰ However much this principle of change may have been at work in other phases of the law, it only superficially influenced the laws under discussion here, which still remained fundamentally the same.

In the early part of the period under discussion, one can see the steadily increasing trek of society's discards making their painful way through the wretched jails and houses of correction of the Commonwealth. That it became desirable in 1770 to punish them by the stocks or whip instead of incarceration, and in 1797 to bind them out to work, would show that accommodations were quite insufficient for all that were turning up. They would indicate the existence at this time of a "standing army of misfits."

The law of 1784 dealing with adultery discarded one link with the past when it no longer included the grotesque use of the letter A worn openly on ones clothing. Otherwise it clung tenaciously to the pre-revolutionary penalties of 1763.

The reduction in fines in 1786 for those found guilty of fornication,

90. Cases and Materials, op. cit. edited by Goebel, J., p. 330.

and the substitution of imprisonment in place of a whipping for the women, show a lessening of the severity of punishment for this offence. And the initial trend away from whipping as a penalty, applied at first to the women only, indicated the path that would be taken at a later date (1813) when whippings were abolished for all. These, then, represent steps in the direction of liberalization of the law which went hand in hand with the very beginnings of our factory system.

One of the outstanding developments of this period was the section of the above-mentioned law dealing with fornication, in which a woman voluntarily confesses, pays a small fine and is freed from prosecution. The attitude of the court toward fornication as judged by this section is certainly not one of grave seriousness. The smallness of the fine and the provision made for larger fines for the frequent offenders, would indicate a widespread and oft-repeated occurrence.

Perhaps one reason for the attitude of the court as expressed in this law was the increased occurrence of extra-marital relations with the beginnings and growth of the factory system. The attitude mirrored in this law may be interpreted as indicating the predominance of the practice in question.

A continuation of the same idea is found in 1860 when the state of Massachusetts found it necessary to deal with persons who were repeatedly convicted for common nightwalking. A maximum term of five years in the house of correction or workhouse for third offenders was established.

Looking back into the social and economic picture of the years preceding 1860, we find the conditions which gave rise to the more common and repeated occurrence of "common nightwalking." We find the starvation

wages of factory workers, the miserable housing conditions, the inferior social and intellectual status of women, and the absence of educational facilities, all combining to drive women into any line of activity which would help them supplement their income. Conditions of this sort, without alleviation, drove girls onto the street and kept them there in an effort to subsist. And Massachusetts thought it desirable to deal harshly with those unlucky enough to get "picked up" three times.

The penalties for adultery and lewd and lascivious cohabitation as set forth in 1835, although omitting the gallows and whipping of the preceding rulings, could scarcely be called less severe. In fact, Professor Fish says, "...the code of the thirties and forties was exceptionally strict." 91 Nor could these laws be called in harmony with the changing economy of the period. Certainly they reflect no "aversion to the past", but, on the contrary, they bring to light the tendency of the legislature to retain the ideology of the past in dealing with these matters.

That the English theological influence was still existent can be gathered 92 from a court decision made in 1839 in the case of the Commonwealth v. Call. "Whatever, therefore, may have been the original meaning of the term adultery", it said, "it is very obvious that we have in this Commonwealth adopted the definition given to it by the English ecclesiastical courts, [italics mine] and this not merely in relation to divorces, but also as descriptive of a public crime." 93 [italics mine] Professor Goebel explains it as a tendency for the "American judicial opinion to reflect English rather than American social conditions" 94 [italics mine]."

91. Fish, Carl, R., The Rise of the Common Man, 1830-1850 (A History of American Life, vol. 6), The Macmillan Co., 1927, p. 152.

92. 38 Mass. 509.

93. Cases and Materials, op. cit., p. 534.

94. Cases and Materials, op. cit. p. 538.

That the 1835 laws dealing with adultery and lewd and lascivious cohabitation and the 1860 laws pertaining to fornication, common night walkers, lewd, wanton and lascivious persons in speech and behavior should have existed unchanged on the statute books to the present day is a telling commentary on the lag that exists in this field between social conditions and the laws. A century of tremendous economic, commercial and industrial expansion and development has changed the nature of our social institutions and brought into existence behavior patterns which reflect the need of a new morality. Yet the persons molded by these new conditions can be penalized by laws which popular opinion continues to accept as the traditional code. The result is that a lag exists between the laws supported by a conservative public opinion and the changing conditions under which the laws operate. Take for example those young persons who postpone marriage for several years in order that they may first become financially secure. Economic insecurity is an important factor in delaying marriages for long periods. Yet, these young couples will often not wait until marriage before becoming sexually intimate. Modern contraceptive information enables them to do so with fair certainty of not running the risk of having children before they are ready. Economic conditions function to delay their marriage, physical maturity tends to draw them together; the law places the stigma of criminality upon them. It is recognized that social adjustments might be made which would enable these young people to marry and thus avoid the legal opprobrium, but it is nevertheless unfortunate that where such adjustments are not made, the law may penalize the persons involved under a criminal statute.

DIGEST

To knit together completely the strands of the sociological base and its legal superstructure in the particular field under discussion would require the skill and deftness of a thoroughly-trained social and legal artist. One less fully equipped can only point to the basic pattern, omitting the finer details of color and texture. The basic pattern would appear to be clear enough in its form to indicate the close correlation between the socio-economic groundwork and its legal off-spring.

When the Massachusetts colony got its start on the new continent, two main factors shaped the attitude taken toward sex morality. First, was the necessity of protecting the family as the essential economic unit of society. Secondly, the theological bent of the leaders' minds determined the peculiar translation of moral code into criminal offenses. When the economic necessity of the initial colonization period vanished, with an upsurge of commercial activity in the 18th century and one of industrial activity in the late 18th and throughout the 19th centuries, one would logically expect to see a harmonious change in the character of these same laws. Two of the factors which had combined to give rise to them originally had quite disappeared, - the colonial economy and the Puritan elect. The home, which they had aimed to maintain intact, was now being broken up by a multitude of moving social and economic forces. All the king's horses and all the king's men - let alone the Puritan laws - could not put it nor keep it together again.

"The waning of the authoritative elements in the family is very probable in the light of economic changes which have occurred since the advent of capitalistic society. Production for the market instead of for the household tends to remove the center of production outside the family - from the artisan's workshop to the factory, from a desk in the home to an office.... Capitalistic economy, furthermore, is not satisfied with the productive services of merely the father or some other leading and responsible member of the household; it attracts the labor of all adults and in many cases of the children...leisure time activities as well as work have been quite generally transferred from the family to the larger social units."¹

To be sure, with the change and development of the economy of Massachusetts, there have come some changes in these laws. But, the new moral code which has sprung up as a result of the economic developments of the past three centuries has failed to replace the obsolete colonial moral code as interpreted into the legal statutes. That is to say, the changes in the laws dealing with female sex offenders from colonial days to the present have been changes in degree of punishment, rather than in a re-statement of what may be considered "sex offenses." At the same time, the changing economic and social conditions have brought changing relations between men and women, and a changing morality in their wake.

Thus, the change in the base has been one of substance; that in the laws one of degree. But even the change in degree has been scant. The tempo of today, economically, socially and morally, is distinctly twentieth century; these laws are seventeenth (or the eighteenth and nineteenth century modifications of the seventeenth) century in form and spirit. It is, to say the least, queer, and indeed a commentary on our culture, that today's laws in this realm still echo the original Puritan terminology.

1. Brinkmann, Carl, "The Family, Social Aspects", Encyclopaedia of the Social Sciences, vol. 6, p. 68.

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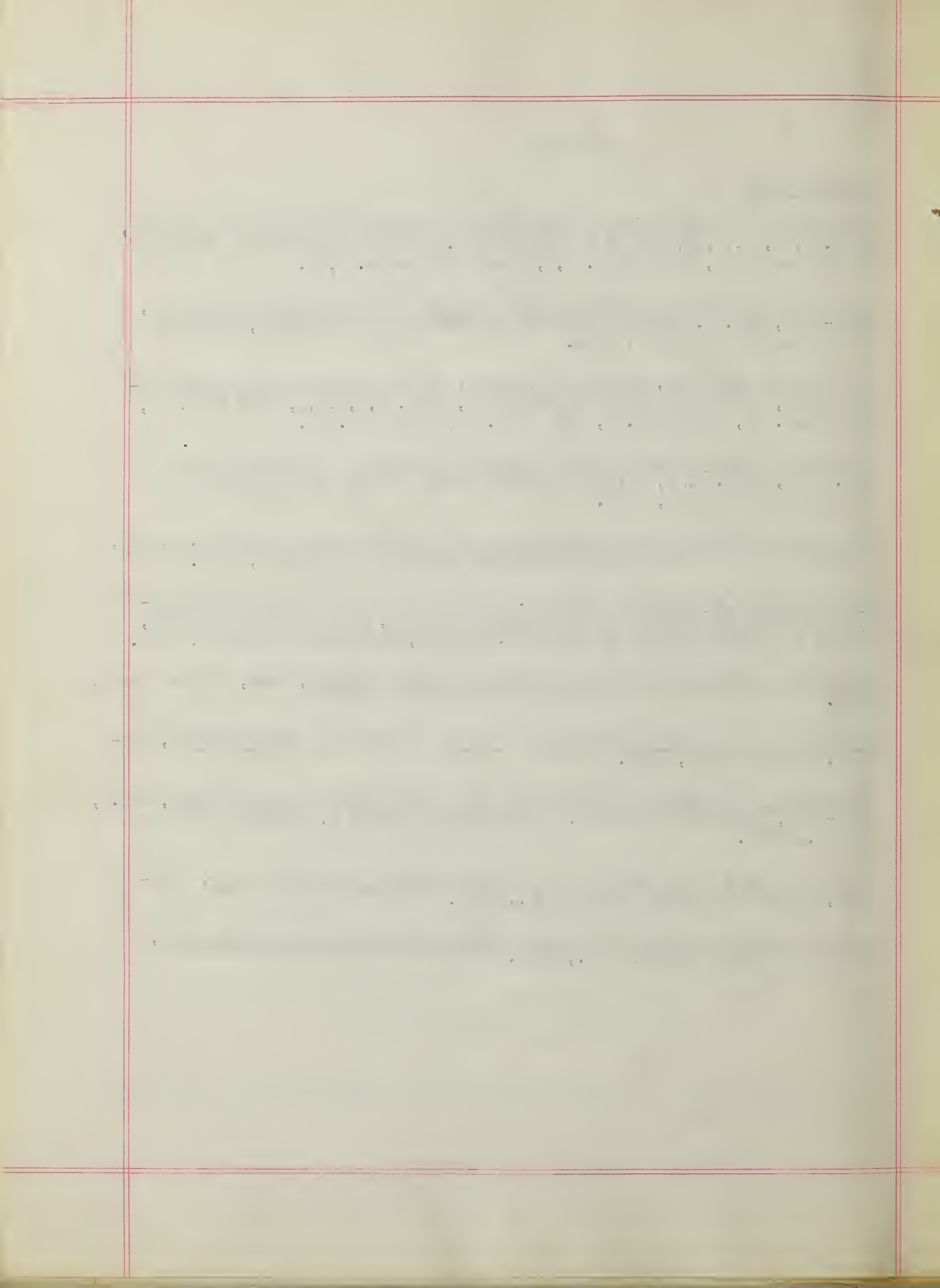
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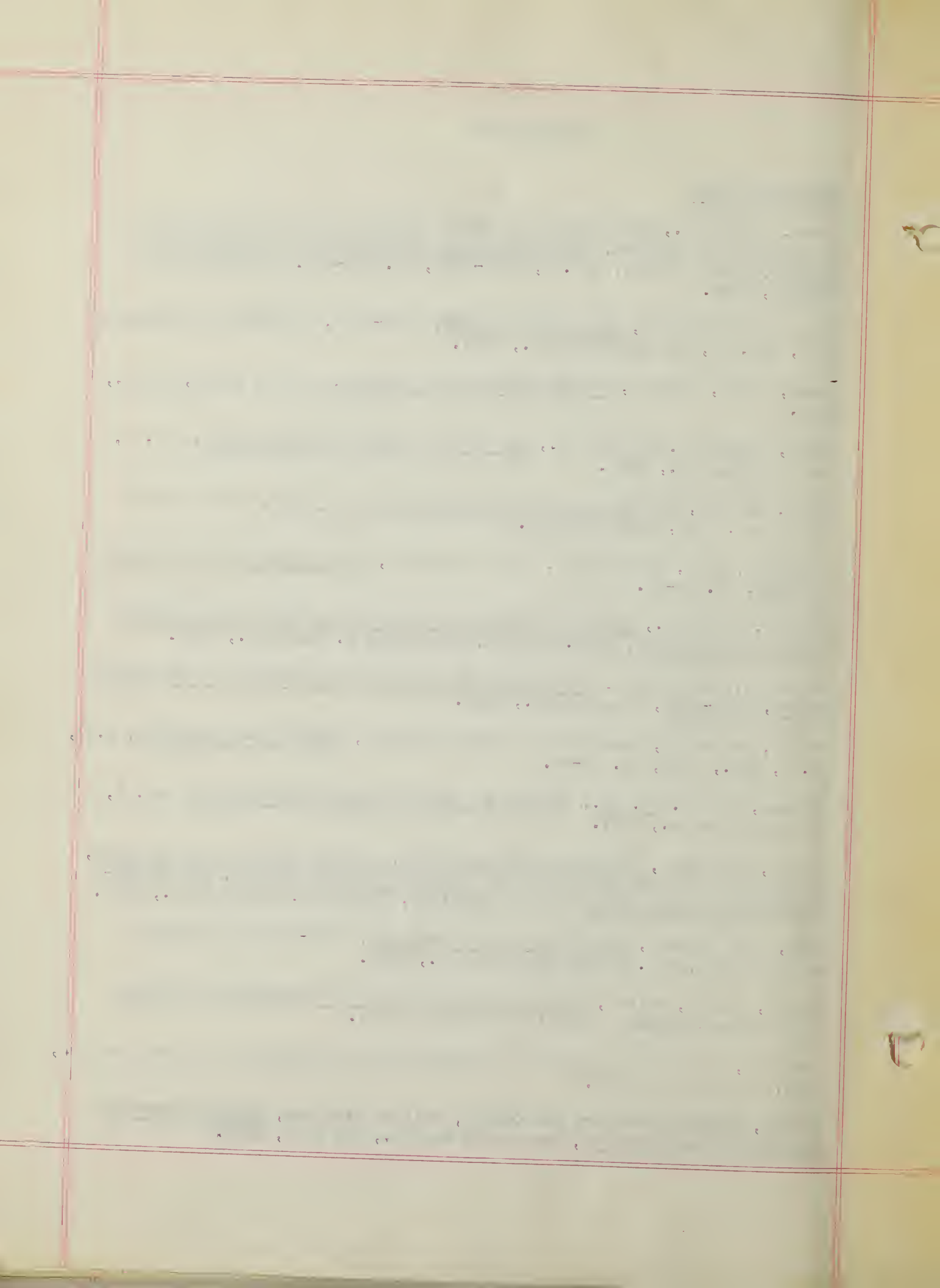
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